

**CONCESSION AGREEMENT**

**between**

**DIAMOND STATE PORT CORPORATION**

**and**

**GT USA WILMINGTON, LLC**

**Dated September 18, 2018**

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**THIS CONCESSION AGREEMENT** (this "Agreement") is entered into as of the 18<sup>th</sup> day of September, 2018 (the "Execution Date") between DIAMOND STATE PORT CORPORATION, a Delaware corporation created in the Department of State of the State of Delaware ("DSPC"), and GT USA WILMINGTON, LLC, a Delaware limited liability company ("GT USA" and together with DSPC, the "Parties" and each, a "Party").

## Recitals

**WHEREAS**, DSPC is a corporation created pursuant to Subchapter II of Chapter 87, Title 29 of the Delaware Code, for the purpose of exercising all functions necessary in connection with the assumption, establishment, acquisition, construction, rehabilitation, improvement, operation and maintenance of the existing Port of Wilmington located at 1 Hausel Road, Wilmington, DE 19801 ("Existing Port") and related facilities, including the recently acquired Edgemoor property ("Edgemoor" and together with the Existing Port, the "Port").

**WHEREAS**, DSPC and GT USA desire to enter into this Agreement to transfer to GT USA the right to commercially operate the Port under the terms and conditions described herein with the objective of increased investment, job growth and promoting and enhancing commerce, shipping, navigation and competitiveness at the Port, all as set forth herein.

**WHEREAS**, DSPC and GT USA will both remain marine terminal operators under the Shipping Act, however, GT USA shall, as set forth in the terms and conditions herein, become the operating marine terminal operator at the Port and DSPC shall continue as a landlord with certain oversight and consent rights.

**WHEREAS**, in return for the right to commercially operate the Port, GT USA shall materially invest in redeveloping the existing port facilities and establishing new port facilities at Edgemoor and shall pay DSPC a Concession Fee as set forth herein.

**NOW, THEREFORE**, in consideration of the fees, covenants and agreements contained in this Agreement, the sufficiency of which is hereby acknowledged by the Parties, the Parties grant, covenant and agree to and with each other as follows:

## ARTICLE 1

### INITIAL REGULATORY MATTERS

## Section 1.1 Recitals

The Parties hereby acknowledge that the recitals are an integral part of this Agreement and are hereby incorporated as substantive provisions of this Agreement.

## Section 1.2 Regulatory Matters

(a) The Parties hereby agree that this Agreement shall be filed with the Federal Maritime Commission (the "FMC") pursuant to the U.S. Federal Shipping Act of 1984, as amended (the "Shipping Act"), promptly following the execution hereof by both Parties (the "FMC Filing") regardless of whether such a filing is required under applicable laws. If the FMC requests additional information concerning this Agreement, DSPC and GT

USA shall jointly address any such requests. As provided in Section 21.23 of this Agreement, the publication of this Agreement or any part hereof by or under the direction of the FMC shall not constitute a violation of the confidentiality or any other provisions of this Agreement.

(b) The Parties acknowledge that, prior to the date of this Agreement, they jointly submitted a voluntary notice ("CFIUS Notice") of the transaction contemplated by this Agreement to the Committee on Foreign Investment in the U.S. ("CFIUS") requesting CFIUS review of such transaction and CFIUS determined on June 25, 2018 that such transaction constituted a "non-covered" transaction (the "CFIUS Approval").

## **ARTICLE 2**

### **COMMENCEMENT, TERM, PREMISES, ASSETS AND CONTRACTS**

#### **Section 2.1 Commencement**

The Parties agree to use best efforts to close the transactions contemplated by this Agreement (the "Commencement") no later than 10:00 am Eastern Time on October 1, 2018 (the "Target Closing Date"), at the offices of Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, Wilmington, Delaware 19801, provided, that this date may be extended until five (5) Business Days following the date on which the last unfulfilled and unwaived condition to be satisfied prior to the Commencement as set forth in APPENDIX 2 shall be fulfilled or waived in accordance with the terms of this Agreement (the "Commencement Date"). Notwithstanding the foregoing, in the event the Parties are not able to satisfy or waive the conditions precedent set forth in APPENDIX 2 by the outside date set forth in Section 11.3 below, then unless the Parties mutually agree to extend this date, this Agreement shall expire in accordance with the terms of such Section 11.3. The conditions to Commencement, representations and warranties and other matters set forth in APPENDIX 2 are hereby incorporated by reference as if fully recited herein.

#### **Section 2.2 Delivery of Premises and Term**

Upon the terms and subject to the conditions set forth in this Agreement, as of the Commencement Date, as fee simple owner of the Premises, DSPC hereby demises and leases unto GT USA all of the land located at the Existing Port and Edgemoor that is owned by DSPC, together with all improvements thereupon and thereunder, including without limitation, all buildings, structures, substructures, subaqueous structures and substructures, piers, wharfs and components thereupon and utility infrastructure owned by DSPC and all of DSPC's easement rights and appurtenances thereto for the use and benefit of such land (the "Premises") as identified in APPENDIX 1, free and clear of all encumbrances (other than the Permitted Liens or as otherwise expressly permitted herein) and, in connection therewith, grants GT USA the right, subject to the further terms of this Agreement, to use and operate the Premises for the uses and purposes set forth in this Agreement, for a term of fifty (50) years (the "Term"), commencing on the Commencement Date and ending on the calendar day immediately preceding the fiftieth (50<sup>th</sup>) anniversary of the Commencement Date (the "Expiration Date"). The date of the termination of GT USA's right to occupy the Premises as the result of any event, including, but not limited to, an event causing an early termination of this Agreement following a GT USA Default, other than the running of the Term, shall be known as the "Termination Date."



79           **Section 2.3   Matters Affecting Premises**

80           (a)     Except as otherwise provided herein, GT USA accepts the Premises as  
81     of the Commencement Date, after a full and complete examination and inspection thereof, in  
82     its AS-IS, WHERE-IS condition, without representation as to suitability for any purpose. GT  
83     USA accepts the Premises as of the Commencement Date subject to (i) utility easements for  
84     existing utilities serving or reasonably necessary to serve the Premises and properties  
85     adjacent thereto or in the vicinity thereof; (ii) any other easements or use or occupancy  
86     restrictions of public record; (iii) any existing leases or other agreements with tenants or  
87     other users of the Port; and (iv) all Laws affecting the Premises.

88           (b)     GT USA shall at all times, and at no cost to DSPC, be subject to and  
89     faithfully obey and comply with all existing leases and agreements with DSPC that are  
90     Assigned Contracts as well as all existing utility easements serving the Premises, all existing  
91     utility easements serving properties adjacent thereto or in the vicinity thereof, and all Laws  
92     applicable to the Premises and GT USA's use and occupancy thereof, and shall require all  
93     users, invitees and guests of the Premises to comply with same.

94           (c)     So long as any bonds, the interest on which is intended to be excludable  
95     from gross income under the Internal Revenue Code of 1986 (the "Code"), related to or  
96     secured by the Premises or any part thereof are outstanding, GT USA shall not make any use  
97     of the Premises that will cause those portions of the Premises that currently qualify as dock  
98     and wharf facilities within the meaning of Section 142 of the Code, to fail to so qualify. In  
99     any event, the Premises shall be used only for the Permitted Operations.

100          (d)     Prior to the Commencement Date or such other time as the Parties shall  
101     mutually agree upon, DSPC and GT USA shall cause a joint pre-occupancy inspection of the  
102     Premises to be conducted and GT USA shall cause the Pre-Occupancy Report to be prepared,  
103     at its own expense. The Pre-Occupancy Report shall detail existing known environmental  
104     conditions at the Premises.

105          (e)     There shall be no continuing financial commitment from DSPC or the  
106     State of Delaware for operating expenses or capital expenditures for the Term of this  
107     Agreement, provided, however, that DSPC hereby agrees to apply any unused capital  
108     provided by the State of Delaware to DSPC for DSPC's July 1st, 2017 to June 30th, 2018  
109     fiscal year for reimbursement of a portion of GT USA's capital expenditures in its first year  
110     of this Agreement ("Supplemental CapEx"). DSPC shall retain control of the Supplemental  
111     CapEx and shall reimburse GT USA upon receipt of appropriate invoices and evidence of  
112     work being properly performed and properly payable from such unused capital and such  
113     other information as DSPC may reasonably request.

114          (f)     Except as may otherwise be authorized by DSPC and, in certain  
115     circumstances, the Delaware General Assembly, GT USA agrees to retain operating control  
116     of the Premises during the Term.

117           **Section 2.4    Reserved Easements**

118           (a)     DSPC reserves to itself, including the right to grant to others in the  
119           future, easements, licenses and permits for construction, maintenance, repair, replacement,  
120           relocation and reconstruction, and related temporary access easements and other easements,  
121           in each case, necessary for the utility easements for existing utilities serving or future  
122           easements reasonably necessary to serve the Premises upon reasonable notice to and  
123           coordination with GT USA (other than in the event of an emergency).

124           (b)     DSPC reserves to itself, including the right to grant to others in the  
125           future, the right (but unless expressly set forth in this Agreement, shall not have the  
126           obligation) to enter upon the Premises and perform such work as may reasonably be  
127           necessary (i) in the event of an emergency or (ii) as otherwise provided in this Agreement.  
128           Without limiting the generality of the foregoing, DSPC reserves to itself, including the right  
129           to grant to others in the future, the right (but unless expressly set forth in this Agreement,  
130           shall not have the obligation) to enter upon the Premises, upon reasonable notice to and  
131           coordination with GT USA (other than in the event of an emergency), to perform any  
132           Response Action that DSPC deems in its sole discretion to be necessary or that may be  
133           required to be performed by Law or a directive from a Governmental Authority having  
134           jurisdiction over the Premises. DSPC shall not be liable for any Loss or interruption of the  
135           Permitted Operations required in connection with DSPC's response to any investigatory or  
136           remedial action required by a Governmental Entity, except to the extent caused by the gross  
137           negligence, willful misconduct or bad faith of DSPC or its employees.

138           **Section 2.5    Quiet Enjoyment**

139           So long as it is not in default hereunder, GT USA shall quietly enjoy the Premises,  
140           subject to DSPC's exercise of its regulatory or administrative authority and other rights as  
141           expressly provided in this Agreement, and shall have the right to perform the Permitted  
142           Operations at the Premises during the Term and, except as otherwise provided herein, to bill,  
143           collect and retain all revenues derived from same (the "Operating Revenues").

144  
145           **Section 2.6    Additional Property**

146           (a)     The Parties acknowledge that pursuant to the Acquisition Agreement,  
147           DSPC holds an option (the "Pigeon Point Option") to purchase the Pigeon Point Property  
148           during the term of the Acquisition Agreement. So long as the Pigeon Point Option has not  
149           terminated or expired, GT USA may provide DSPC with written direction to exercise the  
150           Pigeon Point Option at least ninety (90) days prior to the expiration of the Pigeon Point  
151           Option. Upon receipt by DSPC of such written direction, DSPC shall promptly exercise the  
152           Pigeon Point Option and upon the closing of the Pigeon Point Option, the Pigeon Point  
153           Property shall be deemed included within the definition of Premises as if it were initially part  
154           of the definition thereof for all purposes other than the Environmental Provisions set forth in  
155           ARTICLE 16.

156           (b)     To the extent DSPC obtains control of the Wilmington South Disposal  
157           Area, or any part thereof, and the Army Corps of Engineers consents (if such consent is



required), at GT USA's option such property shall be added to the definition of Premises as if it was initially part of the definition for all purposes. In the event GT USA elects not to incorporate Wilmington South Disposal Area or any part thereof into the Premises, GT USA agrees to provide reasonable ingress and egress easements for access to such property by DSPC and third parties.

(c) GT USA will exercise its best efforts to facilitate a relationship between GT USA and the owner of Boxwood to develop a transportation linkage between the Premises and Boxwood.

(d) GT USA and DSPC agree to use commercially reasonable and exclusive joint efforts to acquire and develop Riveredge as an expansion of existing port operations in the event the Parties determine, each in its sole discretion, that such an opportunity exists or there is a need for such acquisition and development.

## **Section 2.7 Assets at Commencement**

In consideration for the Concession Fee and other payments owed to DSPC under this Agreement (and no separate consideration), on the Commencement Date DSPC shall sell and convey its cranes, electric tools, mechanic tools, vehicles, cargo handling, furniture, furnishings, computers, telephones, telephone numbers, office supplies, software and other intellectual property (including the Port's website (<http://www.portofwilmington.com>), but excluding DSPC's website) and all other equipment and parts and items, tangible and intangible (other than cash), used in operation at the Port to GT USA as of the Commencement Date with clear title, free from all liens, charges or encumbrances of any nature whatsoever, other than Permitted Liens (collectively, the "Original Assets"). GT USA accepts the Original Assets as of the Commencement Date, after a full and complete examination and inspection thereof, in their AS-IS, WHERE-IS condition, without representation as to suitability for any purpose. To the extent any Original Assets are not legally assignable, DSPC shall use commercially reasonable efforts to transfer beneficial ownership of any such Original Assets to GT USA, by license or otherwise, on the Commencement Date or as soon as reasonably practicable thereafter.

## **Section 2.8 Assets Acquired During Term**

In addition to the Original Assets, GT USA shall have the right to purchase or lease (provided that any finance lease shall expressly permit an assignment of GT USA's interest thereunder to any person without restriction or condition), install and use, as applicable, at its cost and expense, cranes, electric tools, mechanic tools, vehicles, cargo handling, and any other equipment or parts (the "After-Acquired Assets" and, together with the Original Assets, the "Assets") on the Premises. To the extent that any After-Acquired Assets require installation at the Premises, GT USA shall provide notice to DSPC. In the event DSPC has the right to purchase any After-Acquired Assets as provided in Section 17.9 of this Agreement and DSPC does not elect to purchase any After-Acquired Assets, GT USA shall, at its expense, remove from the Premises any and all such After-Acquired Assets no later than sixty (60) days following the earlier of the Termination Date or Expiration Date of this Agreement, and shall repair any damage caused by such removal.

199           **Section 2.9    Asset Use and Operations**

200           GT USA shall stow, operate and maintain the Assets at all times in good repair and  
201   operating condition and in conformance with the manufacturer's instructions and applicable  
202   Laws. GT USA shall post in the operator's cab of all cranes a written sheet containing proper  
203   crane stowage instructions and shall require that said instructions are prominently displayed in  
204   the cab at all times.

205           **Section 2.10   Contracts**

206           On the Commencement Date, DSPC shall assign each of the Assigned Contracts as  
207   listed in APPENDIX 2-4 to GT USA and, in connection therewith, GT USA shall assume all of  
208   the obligations thereunder, pursuant to this Agreement and an Assignment and Assumption  
209   Agreement in substantially the form of APPENDIX 2-3 hereto. To the extent GT USA desires to  
210   renegotiate or restructure any of the Assigned Contracts following the Commencement Date,  
211   upon GT USA's request, DSPC agrees to assist GT USA, at GT USA's expense, in the  
212   negotiation of such new contracts.

213           **Section 2.11   Books and Records**

214           (a)    DSPC agrees to provide GT USA with reasonable access to any current  
215   books, records and files of DSPC used to operate the Port by DSPC prior to the Commencement  
216   Date ("DSPC Books and Records").

217           (b)    To the extent DSPC determines, in its sole discretion, to provide originals  
218   of such DSPC Books and Records, GT USA agrees to grant DSPC access, upon reasonable  
219   advance notice, to such DSPC Books and Records and knowledgeable personnel, at DSPC's  
220   expense, as required by DSPC, including without limitation, to comply with any applicable  
221   Laws (including pursuant to the Freedom of Information Act) or in connection with the  
222   completion of the DSPC financial audit for fiscal years 2018 and 2019 or any other audit, any  
223   litigation or other dispute involving DSPC and a third-party.

224           (c)    GT USA shall maintain any and all books and records, including DSPC  
225   Books and Records, relating the transactions contemplated by this Agreement for a period of  
226   seven (7) years on a rolling basis.

227  
228   **ARTICLE 3**  
229   **PURPOSE, USES AND COMPETITION, AND SECURITY**

230           **Section 3.1    Use of Premises**

231           (a)    GT USA shall use the Premises only for the purposes described in this  
232   ARTICLE 3 ("Permitted Operations"), and for no other purpose whatsoever without the prior  
233   written consent of DSPC, which consent may be withheld for any reason whatsoever, or  
234   granted upon such terms and conditions as DSPC may require in its sole and absolute  
235   discretion. GT USA shall use the Existing Port as a facility for the handling, receipt,  
236   delivery, storage, loading and unloading of containers and containerized cargoes and non-  
237   containerized cargoes (including breakbulk, project cargoes, roll-on/roll-off (ro/ro) and bulk



(both liquid and dry)), having a prior or subsequent movement over a pier, berth, or wharf at a terminal in the Port, and facilitating the dis-embarkment and embarkment of passengers, all in compliance with all applicable Laws. Edgemoor shall be used and configured solely as a container handling terminal; provided, that GT USA shall be permitted to accept ancillary general cargo at Edgemoor so long as Edgemoor remains configured as a container handling terminal. Without limiting the generality of the foregoing, Permitted Operations shall also include any stevedore and maritime terminal operations including container, chassis and equipment storage, line handling, docking and undocking of vessels, and operations incidental thereto and any use permitted by any agreement in effect prior to the Commencement Date between DSPC and any other party. Any Permitted Operations shall be in accordance with all applicable permits and Laws, including, without limitation, the Coastal Zone Act, 7 Del. C. §§ 7001 *et seq.*, and GT USA shall not use the Premises as a terminal for liquefied natural gas. GT USA shall use and operate the Premises in a workman-like manner, continuously during the entire Term of this Agreement, with the exception of temporary closures for such periods as may be reasonably necessary for repairs or restoration or for reasons beyond GT USA's reasonable control.

(b) GT USA acknowledges that one of DSPC's primary objectives under this Agreement is for the Premises and Assets to continue to serve DSPC's existing customers and related businesses after the Commencement Date. GT USA shall use commercially reasonable efforts to conduct its operations of the Premises and Assets in a manner designed to achieve this objective.

### **Section 3.2 Standard of Care**

GT USA shall operate the Premises and Assets as a Reasonable Prudent Operator, in accordance with good industry practice and in compliance with all applicable Laws (the "Standard of Care").

### **Section 3.3 No Competition**

(a) Except as provided below, DSPC agrees that during the term of this Agreement it will not, directly or indirectly or as a member of, or participant in, any other entity or as an agent, independent contractor or consultant of any person, enter into, engage in or participate in any other business of operating or owning a port, including, without limitation, any activities involving the provision of funding or other financial assistance or real estate or other property, or the authorization of any form of financing, in each case, relating to a port business. Notwithstanding the foregoing, upon a termination of this Agreement or in the event GT USA breaches its Initial Capital Expenditure Obligation or Total Capital Expenditure Obligation with respect to Edgemoor under this Agreement, then this Section 3.3(a) shall be of no further force and effect. Notwithstanding the foregoing, GT USA may from time to time request that DSPC join with GT USA in activities designed to promote and enhance development of the Port with Governmental Authorities, and to the extent it undertakes such activities, DSPC shall not be in violation of this Section 3.3(a). GT USA agrees that (i) DSPC's ownership of the Port, (ii) any action required or permitted by DSPC under the terms of this Agreement or (iii) the performance of any obligation of DSPC to any third party existing prior to the Commencement Date and not assigned to GT USA shall not be a violation of this Section 3.3(a).



(b) Gulfainer and its Affiliates, including GT USA, agree that during the Term they will not (other than in connection with GT USA's operations under this Agreement), directly or indirectly or as a member of, equity owner or participant in, any other entity or as an agent, independent contractor or consultant of any person, enter into, engage in or participate in the business of operating or owning a port that conducts business consistent with the Permitted Operations along the eastern seaboard from New York, NY to Norfolk, VA and/or inland waters from New York, NY to Norfolk, VA, including, without limitation, any activities involving the provision of funding or other financial assistance or real estate or other property, or the authorization of any form of financing relating to such a port in the specified area; provided, however, that it shall not constitute a breach of this non-compete provision if Gulfainer or an Affiliate thereof were to acquire a port that conducts business consistent with the Permitted Operations subject to the prior written mutual consent of the Port and GT USA, which consent may not be unreasonably withheld. Further, in the event a competitor to GT USA commences a general use port terminal business consistent with the Permitted Operations within the State of Delaware and such business has a Material Adverse Impact on the business of GT USA as contemplated by this Agreement, then this Section 3.3(b) shall terminate in all respects. For the avoidance of doubt, a breach by Gulfainer or any of its Affiliates of this provision shall constitute a breach of this Agreement notwithstanding that any such entity may not be a signatory hereto.

#### **Section 3.4 Security**

(a) As of the Commencement Date, and throughout the Term, GT USA assumes sole responsibility, at no cost to DSPC, for all risks to the safety and security of persons and property and also the property of its customers (including, without limitation, the Premises, the Assets, and cargo, furniture, fixtures and equipment stored or located on the Premises) from theft, personal violence, fire, flood and other causes, and including responsibility for guarding and safekeeping such persons and property and also the property of its customers, to whatever extent such risks arise out of GT USA's lease of the Premises and use of the Assets. GT USA shall be solely responsible for assuring that the Premises comply with all applicable security requirements required to be complied with by Laws, including measures to exclude unauthorized access and for providing and maintaining any physical improvements required to be complied with by Laws related to security requirements. Prior to the Commencement Date, GT USA shall be solely responsible to prepare a security plan that complies with applicable Laws and shall submit such security plan to DSPC and the applicable Governmental Authorities for approval. Upon the request of GT USA, DSPC shall, at GT USA's expense, reasonably cooperate with GT USA in its preparation of such security plan. DSPC reserves the right, but shall have no obligation, to design, build, operate and maintain security plans and programs outside of GT USA's security plan or program for the purposes of DSPC's own Port-wide monitoring, safety and coordination purposes. Any such DSPC security plans and programs may require coordination with GT USA but will not relieve GT USA of requirements to maintain its own security plan or program with respect to the Premises. Upon the request of GT USA, DSPC shall reasonably cooperate with any requirements of any grants for port security upgrades for use at the Premises available to GT USA from any available funding sources.



(b) DSPC shall have oversight rights regarding implementation and operation of safety and security standards by GT USA. GT USA shall consult with DSPC concerning any amendments or other modifications to GT USA's security plan following Commencement.

(c) GT USA shall be responsible for the payment of any fines related to any non-compliance with any security standard addressed herein by any sub-lessee, invitee, guest or any other entrant upon the Premises, such responsibility to include reimbursement for any fines imposed upon DSPC resulting from such noncompliance. Without prejudice to its rights hereunder, DSPC may, in the event of an emergency and in its sole discretion, act to secure the Premises and obtain reimbursement from GT USA for costs so incurred, which payment shall constitute Additional Fees.

(d) GT USA shall comply with all present and future port security requirements under Laws applicable to the Premises and shall provide DSPC on an annual basis beginning December 2018 or at such other times as may be requested by DSPC with a certification in a form reasonably acceptable to DSPC that it is in compliance with all such Laws in addition to the information set forth in Section 21.28(b).

### **Section 3.5 Signage, Advertising and Naming Rights**

(a) Except with respect to signs required by Law, signs posted on the Assets relating to the operation thereof, directional signs related to the Premises and emergency-related or emergency procedural signs, GT USA shall not place, construct, or maintain on the Premises in a location that may be visible from the exterior of the Premises, any signs, advertisements, names, insignia, trademarks, descriptive material, and any other similar item, except for such items advertising business on the Premises which have been authorized in advance in writing by DSPC, provided, however, that GT USA shall have the right to place its name, logo, insignia and/or trademark on all Assets. In particular, DSPC shall have absolute discretion to withhold approval for any new lighted sign or any new sign with moving (or that has the appearance of moving) parts or symbols. DSPC, at GT USA's cost, may remove any item placed, constructed, or maintained that does not comply with the provisions of this Section 3.5. GT USA shall maintain and keep in good repair any such signs.

(b) Upon the earlier of the Expiration Date or Termination Date, GT USA shall remove, to the reasonable satisfaction of DSPC, all signs, advertisements, names, insignia, trademarks, descriptive material and any similar material installed, painted, inscribed or placed in or upon the Premises, GT USA shall repair all damage to the Premises caused by such removal.

(c) Any sign that GT USA has the right to place, construct, or maintain on or adjacent to the Premises shall comply with DSPC's reasonable requirements and with all applicable Laws, and GT USA shall obtain any approval required by such Laws. DSPC makes no representation with respect to GT USA's ability to obtain such approval.

(d) GT USA shall have the right to name and rename the Port, subject to the prior written consent of DSPC, which consent may be conditioned or withheld by DSPC in DSPC's sole discretion, for any reason or for no reason.

(e) While there shall be no formal responsibility during the Term of this Agreement, DSPC shall use reasonable efforts, at GT USA's expense, to assist GT USA in the marketing of services provided by GT USA at the Premises.

#### **Section 3.6 Access to Premises by Third Party**

GT USA agrees to provide access and use of the Port facilities to third parties sufficient to satisfy any applicable requirements under the Shipping Act and FMC regulations.

### **ARTICLE 4**

#### **PAYMENTS, PRORATIONS, CAPITAL OBLIGATIONS AND OTHER**

#### **CONSIDERATION TO DSPC**

#### **Section 4.1 Initial Payment**

On the Commencement Date, GT USA will make an initial payment in the amount set forth on APPENDIX 16, such amount to be subject to a reduction or a non-material increase as of the Commencement Date to the extent the actual amounts as of the Commencement Date vary from those set forth in APPENDIX 16 (the "Initial Payment"). GT USA will offset the amount of the Initial Payment against the Concession Fee Differential (as calculated as if the Minimum Annual Concession Fee were paid in equal quarterly installments over a twelve (12) month period).

#### **Section 4.2 Pre-Closing Dredging Costs**

GT USA hereby acknowledges that DSPC will have incurred certain costs (currently estimated to be One Million Five Hundred Fifty Seven Thousand Six Hundred and Thirty Eight Dollars and 53/100 (\$1,557,638.53)) prior to the Commencement Date associated with dredging at Edgemoor and that GT USA will benefit from such dredging. DSPC does not anticipate that any annual dredging costs associated with dredging at the Existing Port will be incurred by DSPC prior to the Commencement Date, but to the extent any such costs are incurred, GT USA shall be responsible for repayment of its prorata portion of such costs as of the Commencement Date. GT USA shall be responsible for repayment of one hundred percent (100%) of the Edgemoor dredging costs. GT USA agrees that it will reimburse DSPC on the Commencement Date for any and all such costs, subject to DSPC's presentation of verifiable documentation reflecting that DSPC paid the cost for such dredging, and that it shall be responsible for the payment of such further dredging costs after the execution of this Agreement pursuant to Section 6.6. For the avoidance of doubt, the Parties acknowledge and agree that the repayment of dredging expenses shall not be subject to offset against the Concession Fee Differential.



Section 4.3 Concession Fee

(a) For each calendar quarter during the Term (adjusted pro rata for the first and final quarters of the Term), with regard to any and all containerized volumes, GT USA hereby agrees to pay DSPC a fee of [REDACTED] per TEU handled over the quay and a fee of [REDACTED] per TEU with respect to non-water borne (i.e., not coming in or going out over the quay) TEUs handled in the Premises.

(b) For each calendar quarter during the Term (adjusted pro rata for the first and final quarters of the Term), with regard to any cargos not in containers, GT USA agrees to pay DSPC a fee of [REDACTED] per short ton over the quay and a fee of [REDACTED] per short ton with respect to non-water borne short tons handled in the Premises.

(c) If, and when, the non-water borne cargo business exceeds Ten Thousand (10,000) TEUs or Five Thousand (5,000) short tons in any calendar year, the Parties shall meet and negotiate an appropriate increase in the applicable non-water borne rates set forth above. In the event the Parties cannot reach agreement, the dispute resolution provisions in ARTICLE 19 shall apply.

(d) The container volume fees and non-container volume fees in Sections 4.3(a) and (b) above are collectively referred to as the "Concession Fee." GT USA shall pay the Concession Fee to DSPC within twenty (20) days after the end of each calendar quarter of the Term. Commencing on the first day of the calendar quarter immediately following the third (3<sup>rd</sup>) anniversary of this Agreement and every three (3) years thereafter, the per TEU fees and the per short ton fees in Sections 4.3(a) and (b) shall be adjusted in proportion to any increase or decrease in the Index relative to the last year of the last adjustment period (or, with respect to the first adjustment, since the Commencement Date).

Section 4.4 Minimum Annual Concession Fee

(a) The Concession Fee for any calendar year (adjusted pro rata for the first and last years of the Term) during the Term will never be less than Three Million Dollars (\$3,000,000.00) (such amount, as adjusted pursuant to the further provisions of this Section 4.4, the "Minimum Annual Concession Fee"). The Minimum Annual Concession Fee shall be adjusted on January 1<sup>st</sup> following the third (3<sup>rd</sup>) anniversary of the Commencement Date and every three (3) years thereafter in proportion to any increase in the Index relative to the last year of the most-recent adjustment period (or, with respect to the first adjustment, since the Commencement Date). For the avoidance of doubt, in no event shall the adjusted Minimum Annual Concession Fee be less than the Minimum Annual Concession Fee in the immediately preceding adjustment period.

(b) The Minimum Annual Concession Fee may be adjusted at any time during the Term as required so that such fee is sufficient to pay any debt service and post-closing operating costs of DSPC arising out of or otherwise related to the Premises and DSPC's activities as owner, prior operator and/or lessor of the Port; provided, however, DSPC shall not restructure any of its debt existing as of the Execution Date or incur any new debt or

increase its operating expenses in a manner that would materially increase the Minimum Annual Concession Fee without GT USA's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

#### **Section 4.5 Minimum Annual Volume Guarantee**

(a) APPENDIX 13 sets forth the schedule of planned cargo volumes by type of cargo at the Premises as prepared by GT USA (the "Volume Schedule"). GT USA shall act in good faith using reasonable commercial efforts to achieve the Volume Schedule, but in all events, GT USA agrees to maintain a minimum cargo volume equal to seventy-five percent (75%) of the planned cargo volume (the "Minimum Volume") or such other volume in such other manner that would result in a Concession Fee equivalent to the Concession Fee calculated using the Minimum Volume (the "Minimum Annual Volume Guarantee"), regardless of actual cargo volumes handled. For the avoidance of doubt, in the event cargo volumes exceed the Minimum Annual Volume Guarantee, the Concession Fee shall be calculated based on actual volume and shall never be less than the Minimum Annual Concession Fee. For years after Year 10 as set forth in APPENDIX 13, the Minimum Annual Volume Guarantee shall be consistent with or greater than the planned cargo volumes set forth in the Volume Schedule for Year 10.

(b) Provided that the Minimum Annual Concession Fee continues to be paid, to account for market, industry and economic uncertainty, GT USA shall be granted a three (3) year period to make-up the Minimum Annual Volume Guarantee and deliver the aggregate yearly volume over a three year period. In the event GT USA is unable to reach the Minimum Annual Volume Guarantee for any three (3) consecutive calendar years, such failure to achieve the Minimum Annual Volume Guarantee will trigger a negotiation between DSPC and GT USA with regard to any required mitigation or, if agreement between the Parties is not reached, will result in a GT USA Default under this Agreement as set forth in Section 10.1(c).

#### **Section 4.6 Additional Fees**

GT USA shall pay to DSPC as additional fees all other sums of money that shall become due and payable under this Agreement ("Additional Fees"). Unless a date for payment is otherwise specified herein, all Additional Fees shall be due and payable within thirty (30) days of the date of invoicing from DSPC in respect thereof.

#### **Section 4.7 Offsets; Interest on Amounts Subject to Offsets**

(a) Except as expressly permitted in this Agreement, GT USA shall pay to DSPC the Concession Fee and Additional Fees (collectively, the "Fees and Charges") without any deduction, abatement or offset whatsoever.

(b) With respect to all costs, expenses or other liabilities incurred by GT USA under this Agreement that are subject to be offset against the Concession Fees (the "Offsetable Amounts"), interest will accrue on the balance of such amounts at the rate of 4.00% per annum with the interest rate being added to the balance of the Offsetable Amounts and with the accumulated interest being offset before any other Offsetable Amounts are



offset; provided, however, that no such interest shall be imposed or otherwise accrue with respect to any offset permitted under this Agreement until the second anniversary of the Commencement Date, at which time such interest may be imposed and accrue in accordance with this Section 4.7(b) commencing on such date. Further, DSPC shall be permitted to prepay any amounts without premium or penalty that would be subject to an offset hereunder.

#### **Section 4.8 Method of Payment**

All payments owed by GT USA and payable to DSPC hereunder shall be made in United States Dollars and by check or wire, as instructed in writing by DSPC from time to time acting in its sole discretion.

#### **Section 4.9 Committed Minimum Capital Expenditures**

(a) APPENDIX 15 sets forth a schedule of the planned capital expenditures by GT USA at the Premises for the first ten (10) years following the Commencement Date, including development milestones for significant capital expenditure and construction events. For the remaining years of the Term, GT USA is expected to continue to invest capital as required to meet the Basic Condition and cargo volume consistent with or greater than the planned cargo set forth for Year 10 in APPENDIX 13. GT USA shall act in good faith and use reasonable commercial efforts to achieve the planned capital expenditures set forth in APPENDIX 15, but in all events GT USA shall meet the minimum requirements set forth in the further provisions in this Section 4.9.

(b) As a material part of the consideration for this Agreement, GT USA hereby agrees to commence construction of a cargo facility at Edgemoor no later than [REDACTED], with operation of the Edgemoor facility estimated to commence no later than [REDACTED], provided, however, that GT USA may delay without penalty the construction of Edgemoor until [REDACTED] (the "Outside Construction Date"), with operation of the Edgemoor facility in such case estimated to commence no later than [REDACTED], if it has not achieved an annual cargo container volume over the quay at the Existing Port of at least [REDACTED] TEU over the calendar year 2020. For the avoidance of doubt, time is of the essence and failure to meet such milestones, including the required capital expenditure in connection therewith as set forth in Section 4.9(c), shall constitute a GT USA Default.

(c) As a minimum capital expenditure requirement of GT USA, GT USA hereby agrees to (i) spend Forty Million Dollars (\$40,000,000) in capital expenditures at the Existing Port within the first two (2) years following the Commencement Date, (ii) spend Two Hundred and Fifty Million Dollars (\$250,000,000) in capital expenditures in the development of Edgemoor by December 31, 2020, subject to any extension until the Outside Construction Date in accordance with Section 4.9(b) above (clauses (i) and (ii) collectively, the "Initial Capital Expenditure Obligation"), and (iii) spend an aggregate amount, inclusive of the Initial Capital Expenditure Obligation, equal to those amounts necessary to reasonably support the volume projections up to and including Year 10 set out in APPENDIX 13, which is presently estimated at Five Hundred Million Dollars (\$500,000,000) (clauses (i), (ii) and (iii) collectively, the "Total Capital Expenditure Obligation"). However, GT USA shall not



be in breach for failure to meet the Total Capital Expenditure Obligation by the end of Year 10 if (i) GT USA spends at least the Initial Capital Expenditure Obligation and the Minimum Warehouse Capital Obligation and GT USA meets or exceeds the planned volume projections as set forth in this Agreement in the aggregate by the end of Year 10 or (ii) if GT USA fails to meet such planned volume projections at no fault of its own but instead as a result of changes in economic and competitive environments resulting in a Material Adverse Impact to volume throughput for ports generally on the eastern seaboard. DSPC agrees that prior to calling a default for breach by GT USA caused by failure to meet the Total Capital Expenditure Obligation as set forth herein, it will first enter into good faith reasonable negotiations relating to the Total Capital Expenditure Obligation as provided in Section 10.8. The Total Capital Expenditure Obligation referred to herein refer to capital expenditures for new construction.

(d) GT USA shall invest One Hundred Million Dollars (\$100,000,000) in warehouse capital improvements at the Port and/or Edgemoor (the "Minimum Warehouse Capital Obligation"), which shall include a minimum of Twenty Million Dollars (\$20,000,000) in warehouse capital improvements at the Existing Port on or before the third (3<sup>rd</sup>) anniversary of the Commencement Date (the "Initial Warehouse Capital Expenditure"). In no event shall any amount of the Minimum Warehouse Capital Obligation be applied to satisfy GT USA's Initial Capital Expenditure Obligation or Total Capital Expenditure Obligation.

(e) GT USA shall, with DSPC oversight, coordinate with certain additional parties with regards to its capital development and volume plans for the Premises, including without limitation, for the development of a transportation and logistics link with the planned Boxwood logistics facility. In order to meet its Minimum Warehouse Capital Obligation, GT USA shall contract with companies involved in the development of modern warehousing systems designed to retain and attract refrigerated business, particularly existing fruit and perishable product customer.

#### **Section 4.10 Proration of Accounts Receivable and Accounts Payable at the Commencement Date and Post-Closing Adjustment**

Upon the Commencement Date, GT USA will accept any accounts receivables relating to periods prior to the Commencement Date in trust for the benefit of DSPC. Any rents or other payments received shall be prorated between the Parties as of the Commencement Date. In addition, upon the Commencement Date, GT USA shall assume responsibility for payment of all accounts payable due and owing in connection with the operation of the Port; provided, however, any accounts payable arising for time periods prior to the Commencement Date (other than any capital improvement obligation that was required by DSPC under any Assigned Contracts) shall be for the account of DSPC. Within thirty (30) days following the Commencement Date, GT USA and DSPC shall conduct a post-closing adjustment of accounts payable and accounts receivable, including having the amount of all security deposits held by DSPC pursuant to Assigned Contracts for periods of time after the Commencement Date included as an accounts payable due to GT USA by DSPC. Following such adjustment, DSPC or GT USA, as applicable, shall pay the other party the net balance following offset of accounts payable owed to DSPC against accounts receivable owed by DSPC pursuant to the provisions of this Section 4.10.

Reimbursement of the pre-closing dredging costs in Section 4.2 and the Initial Payment are outside of the scope of this adjustment.

## ARTICLE 5

### ASSIGNMENT, SUBLETTING & ORGANIZATIONAL STRUCTURE

#### Section 5.1 No Assignment without DSPC Consent

(a) This Agreement is personal to GT USA. GT USA shall not sell, convey, assign, sublease, license, mortgage, encumber, transfer, transfer beneficial ownership, license, grant or be the subject of a Change of Control, or otherwise dispose of this Agreement, any interest herein or the Premises, or otherwise permit any of the same ("Assign" or "Assignment"), without the prior written consent of DSPC and the Delaware General Assembly (if required by Chapter 87 of Title 29 of the Delaware Code), which consents may be conditioned or withheld for any reason or for no reason.

(b) Notwithstanding anything herein to the contrary, GT USA is hereby authorized, without the prior written consent of DSPC, to enter into subleases for less than substantially all of the Premises provided that any such sublease is entered into in the ordinary course of operation of the Port business. GT USA shall not sublease any part of the Premises for a term beyond the Expiration Date without the prior written consent of DSPC. Other than subleases of portions of the Premises in the ordinary course of business described in this Section 5.1(b), GT USA shall not sublease any of its rights hereunder without the consent of DSPC, which consent shall not be unreasonably withheld, conditioned or delayed. For the avoidance of doubt, any sublease of all or substantially all of the Existing Port or Edgemoor shall not be considered as a sublease in the ordinary course of business.

(c) The following shall be deemed to be an Assignment of this Agreement subject to this Article: (A) any Change in Control of GT USA; (B) any pledge, mortgage, Assignment, or other security arrangement of this Agreement or of the direct ownership interest in GT USA; and (C) any amalgamation, arrangement, reorganization or other business combination agreement between GT USA and any entity, other than any parent, subsidiary or Affiliate of GT USA, in circumstances where GT USA is not the surviving entity. Any Assignment made in violation of the foregoing provision shall be null and void *ab initio* and of no force and effect.

#### Section 5.2 Assignee Information

GT USA shall provide to DSPC and the Delaware General Assembly all relevant documentation and information concerning any proposed assignee to which GT USA proposes to Assign this Agreement ("Assignee"), as reasonably requested by DSPC or the Delaware General Assembly for its consideration in determining whether to grant its consent to such proposed Assignment, including, without limitation, (a) the name of the proposed Assignee, (b) the capitalization of the proposed Assignee, (c) the terms of the proposed Assignment, and (d) such other information and documents relating to the proposed Assignee's business, experience and finances as DSPC or the Delaware General Assembly may reasonably request.



605           **Section 5.3    Assignment Consent Procedure**

606           (a)    No Assignment shall be made or have any force or effect if, at the time  
607 of such Assignment, there has occurred and is continuing a GT USA Default that has not  
608 been remedied or an event that, with the lapse of time, the giving of notice or otherwise  
609 would constitute a GT USA Default.

610           (b)    Unless specifically approved in writing by DSPC, no Assignment,  
611 either with or without GT USA's consent, required or otherwise, will relieve or release GT  
612 USA from the primary obligation to perform all of the terms, covenants and conditions of, or  
613 liabilities under, this Agreement.

614           (c)    Notwithstanding anything herein to the contrary, if an Assignment  
615 occurs with or without DSPC's consent, DSPC may collect from such Assignee, any Fees  
616 and Charges or other sum otherwise payable to DSPC under this Agreement and apply the  
617 amount collected to the Fees and Charges or other accounts receivable with respect to this  
618 Agreement, but such collection by DSPC shall not be deemed a waiver of the provisions of  
619 this Agreement, nor an acceptance of such Assignee as the lessee, concessionaire and  
620 operator of the Premises.

621           **Section 5.4    Organizational Structure**

622           (a)    GT USA hereby represents and warrants that, as of the Execution Date  
623 and Commencement Date, GT Americas owns one hundred percent (100%) of the limited  
624 liability company interests in GT USA. GT Americas is permitted to, but need not, admit  
625 one or more other Equity Participants in GT USA with the prior written consent of DSPC,  
626 which consent shall not be unreasonably withheld; provided, however, that in no event may  
627 GT Americas own or otherwise control less than 51% of the equity and voting interest in GT  
628 USA and, provided further, that such Equity Participant must all times be an entity domiciled  
629 in the United States or is otherwise subject to regulation under securities laws of the United  
630 States.

631           (b)    GT USA shall maintain the day-to-day operational control of the  
632 Premises and Assets. In the event that GT Americas brings in an Equity Participant in GT  
633 USA in accordance with Section 5.4(a), GT USA may elect to form a one hundred percent  
634 (100%) owned subsidiary operating company ("OpCo") of GT USA or through such other  
635 structure as mutually agreed to by GT USA and DSPC. In the event GT USA forms an  
636 OpCo, DSPC shall have the same rights vis-à-vis the OpCo as it has vis-à-vis GT USA and  
637 such OpCo shall be subject to all of the operational controls, observation rights and any and  
638 all other obligations of GT USA as set forth herein. Notwithstanding the forgoing, GT USA  
639 and Gulfainer agree that at all times during the Term, GT USA shall remain controlled by  
640 GT Americas, GT Americas must remain a one hundred percent (100%) subsidiary of GT  
641 International Limited FZC, and Gulfainer Company Limited must remain a controlling  
642 shareholder of GT International Limited FZC.

643           (c)    The board of directors of GT USA shall consist of a majority of  
644 members appointed by GT Americas who shall maintain voting control over matters



submitted to such board at all times during the Term. The GT USA equity owners shall consist of GT Americas owning at least 51% of the equity thereof and maintaining majority voting and governing control over the management of GT USA. GT USA shall permit one representative designated by DSPC to attend all public, private and executive session meetings of GT USA's board of directors in a nonvoting observer capacity and, in such respect, shall give such representative copies of all notices, minutes, consents and other materials that it provides to its directors at the same time and in the same manner as provided to such directors; provided, however, that without limiting the other rights of DSPC set forth in this Agreement (including, without limitation, information and audit rights), GT USA shall be permitted to exclude such representative from a meeting or withhold such materials if the meeting or materials involve an actual conflict with DSPC. GT USA shall hold quarterly meetings of its board of directors, two of which shall be held in the State of Delaware. GT USA's annual meeting, which shall be one of the four required meetings, shall be held in the State of Delaware. GT USA shall provide such representative with no less than five (5) days prior written notice of all meetings.

(d) GT USA shall permit one representative designated by the International Longshoremen's Association to attend all public and private operational meetings of GT USA's board of directors in a nonvoting observer capacity and, in such respect, shall give such representative copies of all notices, minutes, consents and other materials that it provides to its directors at the same time and in the same manner as provided to such directors.

(e) DSPC, its affiliates and representatives agree to act in conformity with the Corporate Governance, Compliance and Anti-Corruption Policy of GT USA, as identified in APPENDIX 14 and as amended from time to time, which shall be incorporated into this Agreement to the extent it is not in contravention of the State of Delaware's or the United States of America's Laws and regulations.

## **Section 5.5 DSPC Oversight and Consent Rights**

(a) During the Term of this Agreement, DSPC shall relinquish operational and management responsibilities over the Port to GT USA; provided, however, DSPC shall have the continuing right to monitor and supervise the safety and security of the Port, as well as the proper and adequate performance by GT USA in carrying out its obligations under this Agreement. It is the intention of the Parties that DSPC shall not be involved in day-to-day operations of the Port but shall be permitted to maintain reasonable oversight and supervision regarding decisions that could affect the safety and security of the Port or have a material impact on the Properties and Assets, DSPC, the State of Delaware or its constituents.

(b) Without limitation of any other consent rights of DSPC under this Agreement or applicable Laws, GT USA shall not take any of the following actions without the prior written consent of DSPC, which will not be unreasonably withheld:

(i) change its business strategy;

(ii) pledge or otherwise encumber any of the Original Assets;

- (iii) lease all or substantially all of the Premises or Assets;
- (iv) construct Leasehold Improvements in excess of Five Million Dollars (\$5,000,000) as provided in Section 6.4;
- (v) construct any Leasehold Improvement which would cause DSPC to incur liability for Existing Conditions;
- (vi) sell any Assets in one or a series of related transaction for greater than Five Million Dollars (\$5,000,000.00);
- (vii) make any material modifications, including removing, destroying or taking down, any buildings or other structures existing at the Existing Port as of the Commencement Date;
- (viii) rename the Existing Port or name Edgemoor;
- (ix) make any material capital related and/or funding decision;
- (x) enter into any new material contracts that would by their terms extend beyond the Term; and
- (xi) make any decisions related to dredging management at the Port.
- (c) DSPC hereby agrees to serve, at GT USA's expense, as the non-Federal proponent of the Premises to the extent that such support is needed, as determined by GT USA in its reasonable discretion, with any federally sponsored programs.
- (d) DSPC agrees to provide reasonable assistance, at GT USA's expense, in connection with the establishment of customs facilities at Edgemoor.

## **ARTICLE 6**

### **MAINTENANCE, ALTERATIONS, IMPROVEMENTS, AND DREDGING**

#### **Section 6.1 Premises Maintenance**

(a) GT USA shall, at its own cost and expense, keep and maintain, in good working order and condition throughout the Term, satisfying the Basic Conditions described in Section 6.4(b) below, the Premises (including without limitation, all portions of the storm water collection system that are on, in, or under the Premises), the Assets, buildings and the wharfs, and perform repair work or replacement work related thereto to ensure that all necessary repairs, improvements and replacements of the facilities at the Premises shall be made, subject to all applicable Laws and to all lawful orders of any Governmental Authority having jurisdiction over Premises and Assets. GT USA shall, at its sole cost and expense, keep the Premises in a tidy, clean and sanitary condition and shall observe all applicable Laws throughout the Term. GT USA shall at all times during the Term, carry out regular safety inspections on the Premises as are required by applicable Laws.



(b) GT USA must keep all railroads and passageways on and adjoining the Premises free from obstruction by GT USA and GT USA Contractors motor vehicles and other objects.

(c) GT USA shall have the sole responsibility, with the reasonable assistance of DSPC at GT USA's request, for obtaining all permits, subaqueous leases and rights of way required for Permitted Operations of the Premises and Assets, at GT USA's expense; provided, however, that DSPC shall use its best efforts to obtain the required permit for required dredging at Edgemoor at the expense of GT USA. To the extent a permit or permit application required for operation of the Port cannot be transferred to GT USA on or prior to the Commencement Date, DSPC shall continue as the named permittee until such time as the permit can be transferred to GT USA, GT USA can be named as a co-permittee or co-applicant or GT USA can procure its own permit. GT USA agrees to indemnify DSPC from any and all liability which may arise from the operation of the Port by GT USA, its employees, agents and contractors under DSPC's permits or permit applications or any permit where DSPC is listed as co-permittee to the extent such liability arises from an exceedance or other violation of the substantive terms and restrictions contained in such permit or permit application or the relevant applicable law and regulations. A list of the current permits, including applications for permits, required for operation of the Existing Port and Edgemoor which GT USA shall undertake to assume or procure, as applicable, prior to (to the extent possible) or following the Commencement Date, as applicable is attached hereto as APPENDIX 3 and incorporated herein by reference.

#### **Section 6.2 Joint Inspection**

Not less frequently than once every five (5) years during the Term, and without limiting any other inspection rights of DSPC under this Agreement, GT USA and DSPC shall undertake jointly an inspection of the Premises and the Assets, the cost of which shall be shared equally, to ascertain the compliance of the Premises and Assets with the Basic Condition and other applicable provisions of this Agreement. If any aspect of the Premises and/or Assets fail to comply substantially with the Basic Condition or any other applicable provisions of this Agreement, GT USA shall bring it into compliance therewith. If DSPC reasonably determines that GT USA has failed to meet its maintenance obligations under this ARTICLE 6, DSPC shall notify GT USA in writing and GT USA shall remedy such deficiency (i) within thirty (30) days or (ii) if such deficiencies cannot be remedied within such period of time, within one hundred and twenty (120) days, or such additional time as DSPC allows, provided, that GT USA commences and diligently pursues remedial work within such initial thirty (30) day period or GT USA shall be in material default under this Agreement.

#### **Section 6.3 GT USA's Failure to Repair and Maintain Premises**

If GT USA fails to repair and maintain the Premises, adhere to Laws (including Environmental Laws) in accordance with this Agreement or correct deficiencies in accordance with Section 6.2 within ninety (90) days after DSPC gives written notice to GT USA and a reasonable opportunity to cure such failure (except in the case of risk to life or property, in which case no notice shall be required), DSPC may enter the Premises at any time upon reasonable notice and make the required repairs or do the required maintenance or bring the Premises into compliance with Laws and recover from GT USA as Additional Fees, the cost thereof (including

the cost of repairs and cleaning plus DSPC's other costs, including, without limitation, employee wages and overhead, incurred in connection with performing such work). In making such repairs or doing such maintenance or cleaning, DSPC and/or its agents are authorized to enter the Premises and may bring and leave upon the Premises all necessary materials, tools and equipment, and DSPC shall not be liable, except for the gross negligence or willful misconduct of DSPC or its representatives, to GT USA for any inconvenience, annoyance, loss of business, or any injury suffered by GT USA by reason of DSPC effecting such repairs, maintenance or cleaning.

#### **Section 6.4 Alterations/Improvements/Maintenance**

(a) GT USA shall make no Leasehold Improvement costing in excess of Five Million Dollars (\$5,000,000) without first obtaining written approval from DSPC, which approval shall not be unreasonably withheld, delayed or conditioned. In the event any such alterations or improvements shall be made or fixtures (other than trade fixtures which can be removed without injury to the Premises) installed by GT USA, such alterations, improvements or fixtures shall, upon request of DSPC, be removed promptly by GT USA at its expense and the Premises Restored to their original condition upon the earlier of the Expiration Date or Termination Date.

(b) All maintenance, alterations, and improvements shall be carried out in accordance with the following standards (collectively, the "Basic Conditions");

(i) Leasehold Improvements, maintenance and alterations must be consistent with the Permitted Operations and shall include such infrastructure and be maintained in a condition sufficient for GT USA to achieve at least the Minimum Annual Volume Guarantee set forth on APPENDIX 13 and include, without limitation, the infrastructure maintenance obligations set forth in APPENDIX 7.

(ii) Prior to constructing, erecting or otherwise making any Leasehold Improvements or alterations, GT USA must procure and pay for all necessary permits, and comply with all applicable Laws.

(iii) Leasehold Improvements and alterations may not detract from the value or the character, weaken the structural integrity, or reduce the security of the Premises, other Leasehold Improvements and/or Assets.

(iv) If any work related to Leasehold Improvements, maintenance or alterations involves the replacement of fixtures or parts, all replacement fixtures or parts shall have a value, useful life, quality and durability substantially or at least the same as the fixtures or parts being replaced and shall be of similar or better quality and nature commonly in use at the time of replacement.

(v) Leasehold Improvements and alterations must be of first quality materials and related work must proceed in a proper, professional manner following appropriate due diligence.



(vi) GT USA shall promptly discharge, remove or contest all liens filed against the Premises arising out of any Leasehold Improvements, alterations or maintenance.

(vii) GT USA shall ascertain and comply with all applicable Laws, including without limitation, all environmental laws related to GT USA's performance of its obligations pursuant to this Agreement and/or GT USA's use and occupancy of the Premises.

(viii) GT USA shall not cause or permit any Hazardous Materials to be generated, treated or stored on or about the Premises or transferred to the Premises, or otherwise in contravention of applicable environmental laws except where applicable permits allow GT USA to handle that hazardous cargo.

(c) GT USA shall provide to DSPC a construction bond with terms consistent with industry standards and for the full cost of the applicable construction for any project in excess of five million dollars (\$5,000,000.00) undertaken at the Premises.

#### **Section 6.5 DSPC Access and Inspection**

(a) If at any time DSPC reasonably suspects a failure of GT USA to meet the Standard of Care, Basic Condition or any other material obligations under this Agreement, including with regard to safety and security, DSPC shall have a right to inspect the operations of the Premises and Assets and the operational throughput records. However, except as otherwise provided in this Agreement, DSPC shall not have access to the financial information of GT USA. The failure of DSPC to notify GT USA of any necessary maintenance or repair shall not relieve GT USA of its obligation to so maintain and repair. The right to inspect reserved to DSPC hereunder shall impose no obligation on DSPC to make inspections to ascertain the condition of the Premises, and shall impose no liability upon DSPC for failure to make such inspections or for failure to discover any defect in the condition of the Premises.

(b) Without prejudicing the rights set forth in Section 10.2(i), in the event that GT USA is unable to occupy and operate the Premises for any period of time, DSPC may immediately enter the Premises and operate the Premises and the Assets if reasonably necessary to continue orderly operations at the Premises.

#### **Section 6.6 Dredging**

(a) Subject to any of GT USA's contractual rights to receive reimbursement from Port tenants, GT USA agrees to cause, at its sole expense, all berthing areas to be dredged on a regular basis so as to maintain depths necessary or appropriate for Permitted Operations and in all events to maintain at least the following minimum depths at the Port, subject to appropriate seasonal adjustments: Berths #1-4: 38 feet MLW; Berths #5-7: 35 feet MLW; Floating Berth: 38 feet MLW; Petroleum Jetty: 38 feet MLW; and Auto Berth: 38 feet MLW.

(b) GT USA shall maintain all licenses and permits required for maintenance dredging at all berths at the Port.

(c) Without limiting GT USA's other requirements as forth in this Agreement, GT USA hereby agrees to be solely responsible for all costs incurred for (i) the channel and/or dredging at Edgemoor, provided, however, that DSPC hereby agrees to use its best efforts to obtain the required permit for the initial dredging at Edgemoor, (ii) the Project Dredge for Edgemoor, and (iii) O&M Dredging for the Existing Port (to the extent not recovered from any third party port tenant with such contractual obligations). O&M Dredging for Edgemoor will be monitored and overseen by DSPC as the non-Federal proponent, but it is intended that it will be paid for by the United States Federal Government during the Term. In the event the United States Federal Government does not assume this cost, the cost of such O&M Dredging shall be shared by DSPC and GT USA pending their mutual review and agreement to any cost sharing arrangement. In the event the parties cannot come to an agreement after their mutual review, the Parties shall follow the dispute resolution procedures set forth in ARTICLE 19.

(d) GT USA shall keep DSPC reasonably informed as to the overall dredging management plan at the Port and shall use its commercially reasonable efforts to implement any requests made by DSPC concerning such plan to ensure that dredging at the Port is at all times being conducted in accordance with the short and long term plans of the State of Delaware and the Army Corps of Engineers. As provided in Section 5.5(b), any decisions related to dredging management at the Port shall be subject to the prior written consent of DSPC.

#### **Section 6.7 Fumigation**

GT USA shall have sole responsibility for the provision of fumigation services by GT USA or a third party at the Premises. All such fumigation services shall be provided in compliance with all Environmental Laws or as may be requested or required by the USEPA, DNREC, the USDA or any other Governmental Authority. Without limiting DSPC's rights to indemnification as provided in ARTICLE 15 of this Agreement, GT USA hereby agrees to indemnify and hold DSPC harmless with respect to any claims or costs incurred by DSPC that are caused by the provision of fumigation services at the Premises. After the Commencement Date, GT USA shall be responsible for any construction, modification, restriction or other expenditure required in order to obtain all required permits for fumigation services at the Port.

#### **Section 6.8 GT USA's Risk**

All structures, alterations, installations, materials, supplies and articles existing or at any time erected, brought, placed or being on the Premises by GT USA, including, without limitation, all activities related to Leasehold Improvements, shall be entirely at the risk of GT USA concerning loss, damage, destruction or accident from any cause whatsoever, except as otherwise provided herein. GT USA EXPRESSLY ACKNOWLEDGES THAT ITS OBLIGATION UNDER THIS AGREEMENT IS SUBSTANTIAL AND MAY INVOLVE SIGNIFICANT COST.

### **ARTICLE 7 DAMAGE OR DESTRUCTION**

#### **Section 7.1 Restoration**



For purposes of this ARTICLE 7, the terms "Restoration," "Restore" or "Restoring" mean, with respect to any Casualty Event, to repair, restore or rebuild the affected portion of the Premises to restore them to their condition prior to the Casualty Event (but in no event to less than the Minimum Condition), as the case may be, ordinary wear and tear excepted.

#### **Section 7.2 Obligations of GT USA**

If all or any part of any of the Premises and/or Assets shall be destroyed or damaged during the Term, in whole or in part, by a Casualty Event, GT USA shall:

(a) Give DSPC written notice thereof promptly after GT USA receives actual notice of such casualty;

(b) At its sole cost and expense, whether or not insurance proceeds, if any, shall be available to pay for the Casualty Costs, proceed diligently to Restore the affected Premises and Assets; and

(c) Deposit all insurance proceeds received by GT USA in connection with a Casualty Event with an Escrow Agent to Restore the Premises (such insurance proceeds and any interest earned thereon the "Casualty Restoration Funds").

#### **Section 7.3 Rights of DSPC**

In addition to the other remedies available to DSPC that are set forth elsewhere in this Agreement or otherwise, the following remedies shall be available to DSPC in the event of a Casualty Event:

(a) In any case where this Agreement shall expire or be terminated prior to the completion of the Restoration, GT USA shall:

(i) promptly account to DSPC for all amounts spent in connection with any Restoration which was undertaken,

(ii) promptly pay over or cause the Escrow Agent established pursuant to Section 7.2 above to pay over to DSPC the remainder, if any, of the Casualty Restoration Funds received by GT USA or held by the Escrow Agent prior to such termination or cancellation, and

(iii) pay over or cause the Escrow Agent to pay over to DSPC, within five (5) Business Days after receipt thereof, any Casualty Restoration Funds received by GT USA or the Escrow Agent subsequent to such termination or cancellation. Upon completion of and payment for the Restoration, DSPC shall return to GT USA any unused portion of the Casualty Restoration Funds.

#### **(b) Failure to Restore Following a Casualty Event.**

(i) If, in the event of a Casualty Event,

(A) GT USA fails or neglects to commence the diligent Restoration of the Premises and/or Assets or the portion thereof so damaged or destroyed, or

(B) having so commenced such Restoration, GT USA fails to complete the same diligently in accordance with the terms of this Agreement,

then DSPC may, by giving sixty (60) days' prior notice to GT USA, deem such failure to be a GT USA Default and thereafter exercise the remedies provided for in ARTICLE 10.

(ii) If, in the event of a Casualty Event, either

(A) GT USA fails or neglects to commence the diligent Restoration of the Premises and/or Assets or the portion thereof so damaged or destroyed,

(B) having so commenced such Restoration, GT USA fails to complete diligently the same in accordance with the terms of this Agreement, or

prior to the completion of any such Restoration by GT USA, this Agreement shall expire or be terminated in accordance with the terms of this Agreement, then DSPC may, but shall not be required to, complete such Restoration using the Casualty Restoration Funds to the extent they are available and otherwise at GT USA's expense. GT USA's obligations under this ARTICLE 7 shall survive the expiration or termination of this Agreement.

#### **Section 7.4 Benefit of DSPC**

The requirements of this ARTICLE 7 are for the benefit only of DSPC. No other person shall have or acquire any claim against DSPC as a result of any failure of DSPC actually to undertake or complete any Restoration as provided in this ARTICLE 7 or to obtain the evidence, certifications and other documentation provided for herein.

#### **Section 7.5 GT USA's Right to Extend Term**

If a Casualty Event has the effect of rendering the Premises substantially unavailable to GT USA for a period in excess of sixty (60) days, then, so long as GT USA is diligently proceeding to Restore the Premises as required under this ARTICLE 7, GT USA shall have the right to extend the Term by such number of days that such Port facilities are substantially unavailable (the "Casualty Extension"). If GT USA elects to exercise the right to the Casualty Extension, GT USA shall give notice to DSPC within thirty (30) days following the date on which GT USA first became aware of its right to the Casualty Extension occurring setting forth the details of the Casualty Event that results in the Premises being substantially unavailable. DSPC shall, after receipt of said notice, be entitled by notice to GT USA to require GT USA to provide such further supporting documentation as DSPC may reasonably consider necessary.

#### **Section 7.6 Cooperation**

DSPC shall cooperate with GT USA and act in a reasonable and expedited manner in connection with any Restoration by GT USA in connection with a Casualty Event, including, without limitation, an expedited review and approval of all documents and requests submitted by GT USA in connection with the Restoration. DSPC and GT USA shall cooperate and coordinate so as to minimize any interference or delay with respect to GT USA's Restoration.

#### **Section 7.7 Assets**



The provisions of this ARTICLE 7 shall apply to any Casualty Event which results in the loss or destruction of any Assets to the extent that the failure to Restore such Assets shall have a material adverse effect on the efficient operation of the Port.

## **ARTICLE 8** **FORCE MAJEURE**

### **Section 8.1    Force Majeure Event**

The term "Force Majeure Event" means any event beyond the reasonable control of GT USA or DSPC, as the case may be, that delays or interrupts the performance of the obligations or covenants of GT USA or DSPC for a period of at least thirty (30) days, respectively, hereunder, including without limitation an intervening act of God or public enemy, war, act of terror, invasion, armed conflict, act of foreign enemy, blockade, revolution, sabotage, civil commotions, interference by civil or military authorities, industry wide strike, illegal non-industry wide strikes provided that GT USA has diligently but unsuccessfully sought to obtain an injunction prohibiting such strike, earthquake, riot or other public disorder, epidemic, quarantine restriction, stop-work order or injunction issued by a Governmental Authority of competent jurisdiction, governmental embargo, restrictions, priorities or allocations of any kind and all kinds, nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, fire, tornado, hurricane, extraordinary tides or winds or other natural disaster, *but only if such event is neither* (a) the result of an exercise of eminent domain *nor* (b) the result of (i) the negligence or misconduct of GT USA or DSPC, as the case may be, or their respective representatives, (ii) any act or omission by GT USA or its representatives in breach of the provisions of this Agreement, or (iii) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of GT USA. Notwithstanding the foregoing, any event that is covered by business interruption insurance shall be excluded from the definition of Force Majeure Event.

### **Section 8.2    Consequences of Force Majeure Event**

In the event that either Party is affected by a Force Majeure Event, the provisions of this ARTICLE 8 shall apply unless such Force Majeure Event constitutes a Casualty Event, in which case, the provisions of ARTICLE 7 shall apply.

(a) Neither DSPC nor GT USA shall be liable for any failure, delay or interruption in performing their individual obligations hereunder due to a Force Majeure Event.

(b) Subject to the notice required in Section 8.3, a Force Majeure Event shall excuse a Party from whatever obligation such Party, using all commercially reasonable efforts, is not actually capable of performing or causing to be performed as a direct result of the Force Majeure Event being claimed for the applicable period stated. Notwithstanding the occurrence of a Force Majeure Event, (i) this Section 8.2 shall not excuse the Party claiming force majeure from the performance of its obligations under this Agreement that, using all commercially reasonable efforts, the Party is actually capable of performing or causing to be performed during the applicable period, and (ii) during such applicable force majeure period, each Party shall use its commercially reasonable efforts to minimize the effect and duration of the Force Majeure Event.

(c) In the event a Force Majeure Event renders all or substantially all of the Premises unusable for the Permitted Operations and both Parties reasonably agree that Restoration (as defined in ARTICLE 7) of such Premises is not possible by GT USA using commercially reasonable efforts within a two (2) year period from the date of the Force Majeure Event, then GT USA and DSPC shall enter into good faith negotiations for terms and conditions upon which this Agreement can be continued and if the Parties fail to agree upon such terms, GT USA may terminate this Agreement and neither party shall have any continuing obligations other than those that arose prior to the termination of this Agreement or that expressly survive termination under the terms of this Agreement.

### **Section 8.3 Notice of Force Majeure Claim**

The party claiming a Force Majeure Event shall give notice to the other party as soon as practicable and in no event later than fifteen (15) days following the date on which it first became aware of such Force Majeure Event, which notice shall include (a) a statement of the basis of the Force Majeure Event claim, (b) details of the circumstances from which any delay arises and (c) an estimate of the delay in the performance of obligations under this Agreement attributable to such Force Majeure Event, including information in support thereof, to the extent known at that time. The party claiming a Force Majeure Event shall bear the burden of proof of the force majeure defense.

## **ARTICLE 9 TAXES, FEES & UTILITIES**

### **Section 9.1 Payment of Taxes and Fees**

GT USA shall timely pay all taxes, fees or other charges imposed with respect to the use and occupancy of the Premises and the Assets and the performance of Permitted Operations, including, without limitation, any documentary or other transfer or sales taxes, property or possessory interest taxes, stormwater charges, and any City of Wilmington business tax with respect to this Agreement or Permitted Operations. DSPC reserves the right, without being obligated to do so, to pay the amount of any such taxes not timely paid by GT USA, and thereafter, upon demand from DSPC that GT USA reimburse DSPC therefor, to require said sum to be due and payable by GT USA to DSPC as Additional Fees. If GT USA wishes at any time to dispute the lawfulness, applicability or amount of any taxes, it must do so with the Governmental Agency imposing the tax. DSPC hereby notifies GT USA that the interest transferred to GT USA pursuant to this Agreement may be subject to property or possessory interest taxes and GT USA may be subject to the payment of property or possessory interest taxes levied on the interest. GT USA further acknowledges that the exemptions enjoyed by DSPC for any tax, stormwater charge or any other fees may not be transferable to GT USA and GT USA shall assume and be responsible for any and all such taxes, charges and/or fees.

### **Section 9.2 Utilities**

GT USA shall contract and pay for all utility services provided to the Premises and to all tenants and other users of the Port, including, without limitation, water, gas, electricity, telephone, data, stormwater and sewage, except to the extent provided in any leases or other agreements with tenants or other users of the Port.



1034 **ARTICLE 10**  
1035 **DEFAULT**

1036 **Section 10.1 GT USA Default**

1037 The occurrence of any of the following shall constitute a default by GT USA ("GT USA  
1038 Default"):

1039 (a) Payment Default. Failure by GT USA to make any payment of money  
1040 due under this Agreement, including, but not limited to, to pay any Concession Fee or the  
1041 Minimum Annual Concession Fee, if the failure continues for ten (10) Business Days after  
1042 written notice has been given to GT USA;

1043 (b) Failure to Invest. Failure to invest the Initial Capital Expenditure  
1044 Obligation and/or Initial Warehouse Capital Obligation and/or failure to invest the Total  
1045 Capital Expenditure Obligation and/or Minimum Warehouse Capital Obligation;

1046 (c) Failure of Minimum Annual Volume Guarantee. Failure to achieve  
1047 Minimum Annual Volume Guarantee set forth on Appendix 13 for any three (3) consecutive  
1048 year period, regardless of whether or not the Minimum Annual Concession Fee is being paid  
1049 by GT USA;

1050 (d) Operations Default. Failure to operate the Premises in accordance with  
1051 the Permitted Operations or to maintain the Premises or Assets in the Basic Condition and/or  
1052 failure to comply with the applicable safety and security standards set forth in this  
1053 Agreement;

1054 (e) Change of Control. Any Change of Control in violation of the terms of  
1055 this Agreement;

1056 (f) Insolvency. Any of GulfTainer, GT Americas, GT USA or OpCo  
1057 becomes Insolvent;

1058 (g) Abandonment. Abandonment of the operation and development of the  
1059 Port as contemplated by this Agreement, including, without limitation, failure to occupy and  
1060 operate the Premises for five (5) Business Days except in connection with a Casualty Event  
1061 or Force Majeure Event;

1062 (h) Failure to Maintain Insurance or Letter of Credit. Failure to obtain and  
1063 maintain any insurance policy as required by ARTICLE 14 of this Agreement or the Letter of  
1064 Credit in accordance with the terms of this Agreement;

1065 (i) Failure to Comply with Employee Provisions. Failure to comply with  
1066 the employee provisions described in ARTICLE 20;

1067 (j) Assignment. Any Assignment made by GT USA in violation of the  
1068 terms and conditions of ARTICLE 5 of this Agreement, to the extent that such violation is  
1069 not waived, approved or cured in accordance with the terms thereof;

(k) Execution or Attachment. Execution or attachment against the Assets, to the extent that such execution or attachment substantially interferes with Permitted Operations, or against all or any material part of the Premises or any interest therein that has been created or allowed in any way to exist by GT USA or any person claiming through it, and such execution or attachment has not been vacated, stayed by court order, bonded or otherwise removed within a period of sixty (60) days; and/or

(l) Breach of Representations, Warranties and Other Covenants. Any material breach by GT USA, GT Americas, OpCo (if formed) or any GT USA Affiliate or OpCo Affiliate of any other representation, warranty, covenant, condition or other term of this Agreement.

## **Section 10.2 DSPC Remedies Upon GT USA Default**

Subject to Section 10.8, upon the occurrence of and during the continuance of a GT USA Default, DSPC may, upon written notice to GT USA, declare GT USA to be in default; provided that to the extent the GT USA Default is curable, GT USA shall have thirty (30) days to cure such GT USA Default after receiving notice thereof from DSPC unless another cure period is expressly provided herein. In the event of a GT USA Default, DSPC may avail itself of the remedies set forth below (but in no event shall DSPC be obligated to do so). Such remedies are not exclusive, and the election of one remedy shall not preclude an election of any other remedy (or no remedy) at any later time.

(a) Termination of Agreement and Right to Possession. DSPC may, at its option, terminate this Agreement and terminate GT USA's right to use the Premises and Assets and have the Premises and all Assets and other property returned to DSPC (including transfer of title to infrastructure, equipment and assets, whether now or hereafter acquired) by giving written notice of termination to GT USA. The consequences of such termination shall be as set forth in Section 11.2.

(b) Re-entry and Distrain. Subject to Section 10.1 above, DSPC may, at its option, terminate this Agreement and, to the extent allowed pursuant to applicable law, re-enter the Premises and distrain upon any of GT USA's Assets and other property.

(c) DSPC Performance in Lieu of GT USA. DSPC, without waiving or releasing GT USA from its obligations under this Agreement, may observe and perform the covenant or covenants of which GT USA has defaulted (but in no event shall DSPC be obliged to do so), and in that event may pay such monies as may be reasonably required or as DSPC may reasonably deem expedient, and DSPC shall thereupon charge all monies to GT USA, together with interest thereon, at an annual rate equal to the Prime Rate plus 2.5 percent, from the date on which DSPC paid the monies. GT USA shall repay such monies to DSPC forthwith on demand as Additional Fees, and DSPC shall have the same rights and remedies and may take the same steps for recovery of the monies so paid, together with interest, as DSPC may take for recovery of arrears of Fees and Charges.

(d) Damages. DSPC shall have the right to recover its Losses arising from such GT USA Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any person who is owed damages or



a debt. For the avoidance of doubt, the parties agree that this Agreement includes an acceleration clause and DSPC shall have the right to have an arbitrator or court include future owed payments in its calculation of damages subject to DSPC's duty to mitigate under applicable law.

(e) Letter of Credit. DSPC may draw upon the Letter of Credit.

(f) Oversight. DSPC may increase oversight authority and implement consent rights to any actions by the GT USA Board of Director, in the sole discretion of DSPC.

(g) Specific Performance. DSPC may seek specific performance, injunction or other equitable remedies, it being acknowledged by GT USA that damages may be an inadequate remedy for a GT USA Default.

(h) Handback Guaranty. DSPC may make a claim on the Handback Guaranty.

(i) Leasehold Improvements. In connection with the termination of this Agreement, DSPC may take possession of all Leasehold Improvements and, in its discretion, use them for DSPC's benefit or sell or otherwise dispose of them.

(j) Other Remedies. DSPC shall have any other remedy available under applicable law.

### **Section 10.3 Use or Storage of Abandoned Property**

In the event of a termination following a GT USA Default, or if GT USA vacates the Premises for more than five (5) days, DSPC may use or store all or any of the Assets at the expense of GT USA, and if stored on DSPC property but not used, charge GT USA for use of storage premises.

### **Section 10.4 DSPC's Rights; Non-Waiver**

No acceptance of any Fees and Charges or other payment subsequent to any breach, non-observance or non-performance, nor any condoning, excusing or overlooking by DSPC on previous occasions of breaches, non-observances or non-performances, shall be taken as a waiver of such breach, non-observance or non-performance or in any way defeat or affect the rights of DSPC contained herein. No consideration by DSPC permitting GT USA to rectify any breach, non-observance or non-performance shall be taken as a waiver of GT USA's covenants or shall in any way defeat or affect the rights of DSPC to terminate this Agreement for a subsequent breach. DSPC may exercise any of its rights and remedies under this Agreement or at law or in equity.

### **Section 10.5 Consequences of Termination upon GT USA Default**

Upon termination of this Agreement by DSPC in accordance with Section 10.2(a) above, the provisions under ARTICLE 11 and ARTICLE 17 shall apply.

1147           **Section 10.6    DSPC Default**

1148           The occurrence of any of the following events during the Term shall constitute a default  
1149 by DSPC ("DSPC Default"):

1150           (a)    Failure to Transfer. Failure by DSPC to facilitate the transfer of the  
1151 Premises, the Original Assets or the Assigned Contracts to GT USA;

1152           (b)    Assist with Regulatory and Administrative Matters. Failure by DSPC  
1153 to use commercially reasonable efforts, at GT USA's cost, on an on-going basis under this  
1154 Agreement to assist GT USA with all regulatory and administrative matters associated with  
1155 the management and operation of this Agreement that permits GT USA to fulfil the terms of  
1156 this Agreement;

1157           (c)    Failure to Maintain Insurance. Failure to obtain and maintain any  
1158 insurance policy as required by ARTICLE 13 of this Agreement; and/or

1159           (d)    Breach of Representations, Warranties and Other Covenants. Any  
1160 material breach by DSPC of any other representation, warranty, covenant, condition or other  
1161 term of this Agreement.

1162           (e)    Cooperation with Financings. The failure of DSPC to reasonably  
1163 cooperate with GT USA and any Leasehold Mortgagees with respect to any financing by GT  
1164 USA pursuant to Section 18.

1165           (f)    The Beazley Insurance Policy. The failure of DSPC to retain the  
1166 Beazley Insurance Policy in full force and effect through the end of such policy's term.

1167           **Section 10.7    GT USA Remedies Upon DSPC Default**

1169           Upon the occurrence of and during the continuance of a DSPC Default, GT USA may,  
1170 upon written notice to DSPC, declare DSPC to be in default and may avail itself of the following  
1171 remedies. These remedies are not exclusive, and the election of one remedy shall not preclude  
1172 an election of any other remedy at a later time:

1173           (a)    After-Acquired Assets (for the avoidance of doubt, excluding the  
1174 Original Assets) shall remain the property of GT USA after termination of this Agreement;  
1175 provided, however, GT USA shall have the option to require DSPC to purchase such assets at  
1176 fair market value, as determined in accordance with procedures set forth in Section 17.9(c),  
1177 in the event of a DSPC Default.

1178           (b)    GT USA may seek specific performance, injunction or other equitable  
1179 remedies, it being acknowledged by DSPC that damages may be an inadequate remedy for a  
1180 DSPC Default.

1181           (c)    GT USA may seek to recover all of its Losses arising from a DSPC  
1182 default, which losses shall include any and all damages, liabilities, penalties, charges, costs  
1183 and expenses, arising from such DSPC Default.



1184           **Section 10.8   Good Faith Negotiations**

1185           Notwithstanding any provision herein to the contrary, in the event either Party declares a  
1186 default under this ARTICLE 10, the Parties agree to first enter into good faith amicable  
1187 negotiations between the executive management of each of DSPC and GT USA over a period of  
1188 thirty (30) days to resolve the default following any applicable cure period. The foregoing  
1189 obligation shall not apply to any failure to maintain any required insurance or the Letter of Credit  
1190 or any default involving a hazardous condition or any non-curable default.

1191           **Section 10.9   Offsetable Amounts**

1192           Notwithstanding any expiration or termination of this Agreement or the remedies  
1193 exercised by either party, the balance of any Offsetable Amounts will remain an obligation of  
1194 DSPC and will be paid in full by DSPC concurrent with such expiration or termination;  
1195 provided, however, in the event this Agreement is terminated as a result of a GT USA Default,  
1196 this provision shall not apply to any Offsetable Amount that was incurred solely as a result of  
1197 entering into the transactions contemplated herein (e.g., Seabury fee, obligations under Section  
1198 20.2, etc.). Nothing herein shall be construed to waive GT USA's right to seek recovery of such  
1199 excluded amounts pursuant to the dispute resolution provisions in Section 19.2 herein.

1200                                   **ARTICLE 11**  
1201                                   **TERMINATION**

1202           **Section 11.1   Surrender**

1203           Upon the earlier of the Expiration Date or Termination Date, GT USA shall surrender the  
1204 Premises and Assets (including, without limitation, any remaining Original Assets, any new or  
1205 replacement assets, infrastructure, alterations, equipment, etc. subject to Article 17) in the  
1206 Minimum Condition as set forth in Section 17.2. In case of earlier termination due to a DSPC  
1207 Default, equipment purchased by GT USA (other than the Original Assets) shall remain the  
1208 property of GT USA after termination of this Agreement. Title to Original Assets conveyed to  
1209 GT USA and title to any Leasehold Improvements constructed by GT USA on the Premises  
1210 during the Term shall be transferred from GT USA to DSPC upon the earlier of the Expiration  
1211 Date or the Termination Date, at no additional cost to DSPC.

1212           **Section 11.2   Termination Consequences**

1213           Upon expiration or the termination of this Agreement, the following provisions shall  
1214 apply:

1215                   (a)   GT USA shall, on the Expiration Date or Termination Date, as  
1216 applicable, and without any action whatsoever being necessary on the part of DSPC, vacate  
1217 the Premises immediately and well and truly surrender and deliver to DSPC, the Premises  
1218 free and clear of all encumbrances other than (i) those affecting title to the Premises existing  
1219 as of the Commencement Date, and (ii) those created by or suffered to exist or consented to  
1220 by DSPC;

1221                   (b)   GT USA shall transfer to DSPC title to any Original Assets conveyed  
1222 to GT USA along with any After Acquired Assets in use for the operation of the Port upon

the earlier of the Termination Date or Expiration Date, at no additional cost to DSPC, except as provided in ARTICLE 17;

(c) GT USA shall within sixty (60) days remove any of its property of GT USA, including any fixtures that GT USA is required to remove at the end of the Term and deliver all keys and otherwise afford DSPC full and proper access to the Port and all improvements located at the Port;

(d) GT USA shall be liable for all costs, expenses and other amounts for which it is liable or responsible hereunder incurred up to and including the Expiration Date or Termination Date, as applicable;

(e) DSPC shall have the option, by providing notice to GT USA, of requiring that GT USA assign to DSPC or its nominee, without warranty or recourse to GT USA, all of GT USA's right, title, and interest in, to, and under, this Agreement;

(f) GT USA shall, at its sole cost and expense, promptly deliver to DSPC all "as-built" drawings, plans, other drawings, specifications and models prepared in connection with any Leasehold Improvements and otherwise applicable to the Premises and all permits relating to such Leasehold Improvements;

(g) GT USA shall, at its sole cost and expense, promptly deliver to DSPC copies of all records and other documents relating to the Premises as DSPC, acting reasonably, may request;

(h) GT USA shall execute and deliver to DSPC a release or other instrument reasonably required by DSPC to evidence such expiration or termination;

(i) GT USA shall, upon the Expiration Date, assign to DSPC any contracts or other agreements extending beyond the Term that DSPC has consented to pursuant to Section 5.1(a) or shall, upon the Termination Date, assign to DSPC all existing contracts and agreements relating to operations at the Port, as requested by DSPC; and

(j) GT USA shall assist DSPC in such manner as DSPC may require to ensure the orderly transition of control, maintenance and rehabilitation of the Premises.

### **Section 11.3 Outside Date on Conditions Precedent**

Notwithstanding anything herein to the contrary, in the event the Parties are not able to satisfy the conditions precedent set forth in APPENDIX 2 by October 31, 2018, then unless the Parties mutually agree to extend this date, this Agreement shall automatically expire and neither party shall have any continuing obligations other than those that arose prior to the termination of this Agreement, or that expressly survive expiration under the terms of this Agreement.

### **Section 11.4 Survival**

This ARTICLE 11 shall survive the Expiration Date or Termination Date, as applicable.



**ARTICLE 12**  
**EMINENT DOMAIN**

**Section 12.1 Taking Event**

(a) If any portion of the Premises shall be taken by any Governmental Authority under the power or threat of eminent domain for any public use or purported public use during the Term, a "Taking Event" shall have been deemed to have occurred.

(b) If in a Taking Event, a portion, but less than substantially all, of the Premises is taken (a "Partial Taking Event"): (a) each Party shall give the other Party notice thereof promptly after such Party receives actual notice of such Partial Taking Event; (b) GT USA shall, in the event GT USA determines in its reasonable discretion that the remaining portion of the Premises after such Partial Taking Event is still suitable for its intended use, at its sole cost and expense, and provided that the condemnation or other similar proceeds, if any, shall be available to pay for the estimated or actual cost of repairs, alterations, Restorations, replacement and rebuilding, proceed diligently to Restore the portions of the Premises that were not subject to the Partial Taking Event in accordance with ARTICLE 6; and (c) GT USA shall deposit with an Escrow Agent such portion of the condemnation or other similar proceeds received by GT USA in connection with such Partial Taking Event necessary to Restore the Premises as the parties hereto reasonably agree (the "Taking Restoration Funds") which shall be used and applied in the Restoration of the lost or damaged property.

(c) GT USA shall be entitled to claim, prove and receive in any condemnation proceedings such awards or other compensation for any loss or diminution in or of interests under this Agreement as may be allowed by the Governmental Authority effectuating such Taking Event; provided, however, that GT USA's claim may not frustrate or adversely impact DSPC's separate claims for compensation in connection with such Taking Event. If multiple claims with respect to such Taking Event are barred under applicable Law, the parties shall reasonably cooperate in consolidating their separate claims.

**Section 12.2 Effect of a Taking Event on This Agreement**

(a) In the event of a Taking Event in which all or substantially all of the Premises are taken or so transferred, this Agreement and all of GT USA's right, title and interest thereunder shall cease on the date title to such property so taken or transferred vests in the Governmental Authority effectuating the Taking Event.

(b) In the event of a Partial Taking Event, on the earlier of the date title to the portion of the Premises vests in such Governmental Authority, or the date on which such Governmental Authority takes possession of the portion of the Premises: (i) this Agreement shall terminate with respect to DSPC's and GT USA's future obligations hereunder with respect to the portion of the Premises so taken and (ii) all Fees and Charges and any other payments due hereunder from GT USA to DSPC for the remainder of the Term shall be equitably reduced from and after such Partial Taking Event to the extent GT USA does not have full use of the Premises as a result of such Taking Event.

**Section 12.3 Rights of DSPC and GT USA**

In addition to the other remedies available to DSPC that are set forth elsewhere in this Agreement, the following remedies shall be available to DSPC and GT USA in the event of a Taking Event:

(a) In any case where this Agreement shall expire or be terminated prior to the completion of any Restoration initiated by GT USA, GT USA shall (i) promptly account to DSPC for all amounts spent, and all accounts due and payable at the time of termination, in connection with any Restoration which was undertaken, (ii) promptly pay over or cause the Escrow Agent to pay over to DSPC the remainder, if any, of the Taking Restoration Funds received by GT USA or held by the Escrow Agent prior to such termination or cancellation and after payment in full of any accounts then due and payable, and (iii) pay over or cause the Escrow Agent to pay over to DSPC, within five (5) Business Days after receipt thereof, any Taking Restoration Funds received by GT USA or the Escrow Agent subsequent to such termination or cancellation; and

(b) DSPC's rights under this Section 12.3 shall survive the Expiration Date or Termination Date, as applicable.

**Section 12.4 Rights of GT USA**

In the event of a Taking Event affecting only a portion of the Premises, leaving the remainder of the Premises in such location or in such form, shape or reduced size so as not to be effectively and practicably usable for its intended purpose or in the event of a Taking Event that directly affects more than seventy percent (70%) of the Premises, GT USA may, by giving notice to DSPC within sixty (60) days after the occurrence of such Taking Event, subject to the provisions set forth in ARTICLE 11, terminate this Agreement.

**Section 12.5 Payment of Taking Restoration Funds to GT USA**

Subject to the satisfaction by GT USA of all of the terms and conditions of this ARTICLE 12, the Escrow Agent shall pay to GT USA from time-to-time any Taking Restoration Funds, but not more than the amount actually collected by the Escrow Agent upon the Taking Event, together with any interest earned thereon, after reimbursing itself therefrom, as well as DSPC, to the extent, if any, of the reasonable expenses paid or incurred by the Escrow Agent and DSPC in the collection of such monies.

**Section 12.6 Payment and Performance Bonds**

If GT USA obtains payment or performance bonds related to a Restoration, GT USA shall name DSPC and itself, as their interests may appear, as additional obligees, and shall deliver copies of any such bonds to DSPC promptly upon obtaining them.

**Section 12.7 Cooperation**

DSPC shall cooperate with GT USA and act in a reasonable and expedited manner in connection with any Restoration of the Premises by GT USA in connection with a Taking Event, including, without limitation, an expedited review and approval of all documents and requests



submitted by GT USA in connection with the Restoration. The parties agree to cooperate and coordinate so as to minimize any interference or delay with respect to GT USA's Restoration.

## **ARTICLE 13**

### **INSURANCE**

#### **Section 13.1 Types and Amounts**

GT USA shall, and shall cause its subcontractors and customers to, obtain, maintain and pay for, or cause to be obtained, maintained and paid for during the Term, during any GT USA holdover occupancy of the Premises, and during such other time as GT USA occupies, suffers, permits or allows any person to occupy the Premises, insurance, insurance policies and/or bonds with respect to the Premises and Permitted Operations as required under this Article, against all risks as specified in this Article, including the following:

(a) Liability Insurance. Commercial General Liability or Comprehensive Marine Liability Insurance, including coverage for bodily injury and property damage, with such types of coverage and minimum coverage amounts as may be reasonably requested by DSPC from time to time, but in no event for less than \$1,000,000 limit per occurrence \$2,000,000 Annual General Aggregate and \$2,000,000 Products and Completed Operations Aggregate and in no event with less than the following coverages:

- (i) Premises and Operations Liability;
- (ii) Products and Completed Operations Liability;
- (iii) Blanket Contractual Liability;
- (iv) Personal and Advertising Injury Liability;
- (v) Broad Form Property Damage Liability, including completed operations;
- (vi) Fire Legal Liability;
- (vii) Independent Contractors Liability;
- (viii) Elevator Liability;
- (ix) Employees as Additional Insureds; and
- (x) Freight and cargo coverage covering cargo of Port customers.

(b) Pollution Liability. Pollution liability insurance covering GT USA's liability for bodily injury, property damage and environmental damage resulting from sudden and accidental and gradual pollution and related clean-up costs incurred by GT USA. The combined single limit per occurrence shall not be less than \$50,000,000.

(c) Wharfingers/Stevedoring Legal Liability. Wharfingers (Port Authorities Legal Liability) – Includes first and third party property damage to vessels, cargo, freight, etc., plus bodily injury to third parties. (Stevedores Addendum) – Includes property in care, custody and control. The coverage limited in the amount of not less than \$1,000,000 per occurrence.

(d) Protection & Indemnity Insurance. Protection & Indemnity Insurance (at no less than \$1,000,000) if GT USA operates vessels in connection with the performance of Permitted Operations at the Premises.

(e) Employer's Liability Insurance. Employers Liability Insurance in respect of all GT USA's employees, workers and servants engaged in any work in or upon the Premises in the amount of not less than \$1,000,000 each accident, each employee and policy limit for injury and disease.

(f) Assets. "All risk" coverage including Collapse or Upset, Earthquake and Flood Insurance, 100% Replacement Cost Valuation Insurance, Loss of Use and Extra Expense for the Assets.

(g) Terrorism. Subject to continuing commercial availability at commercially reasonable prices, terrorism insurance covering property and liability in respect of the Premises and Assets in the amount not less than \$50,000,000 for uncertified and certified (as specified under the Terrorism Risk Insurance Program Reauthorization Act) acts of terrorism.

(h) Business Automobile Insurance. Covering all owned, non-owned, hired and used automobiles with limits of at least \$1,000,000 per occurrence.

(i) Property Insurance. Property insurance on an "all risk" or Special Form basis covering all buildings, fixtures, improvements and equipment (other than the Assets) on the Premises on a replacement cost basis with limits of 100% of the full replacement cost of such property, subject to market-based deductibles, sub-limits for catastrophic risks and probable maximum loss determinations (pursuant to a probable maximum loss analysis completed by a qualified, independent firm).

(j) Umbrella/Excess Liability Policy. GT USA shall maintain an Umbrella or Excess Liability policy with a limit of not less than Fifty Million Dollars (\$50,000,000) in excess of and including the coverage stipulated in the primary policies as stated above in subsections (a), (c), (d), (e) and (h). Any retention is the responsibility by GT USA, and will not be claimed against DSPC.

(k) Business Interruption Insurance. Business interruption insurance on an "all risk" or special form basis, which names DSPC as "loss payee" with a minimum liability coverage of five times the Minimum Annual Concession Fee payable to or for the benefit of DSPC under this Agreement.

(l) Builder's Risk Insurance. Before any improvements are made to the Premises, GT USA shall obtain and maintain in full force and effect during the construction



of such improvements, an All Risk (Special Form) basis insurance policy at the full replacement value of the work, subject to no coinsurance, with GT USA, DSPC and any/all subcontractors as named insureds, and with deductible to the account of GT USA.

(m) Workers' Compensation Coverage. Workers' Compensation Coverage in respect of all GT USA's employees, workers and servants engaged in any work in or upon the Premises in compliance with Law, including The U.S. Longshore and Harbor Worker's Act and, if Permitted Operations include operating vessels, The Merchant Marine Act (Jones Act).

(n) Other Forms and Amounts of Insurance. Additional insurance and/or increased coverage minimums, if deemed necessary by DSPC, shall be provided by GT USA, at the sole cost of GT USA.

### **Section 13.2 GT USA's Failure to Carry Insurance**

All insurance shall be in form and amounts specified in this ARTICLE 13. If GT USA fails to obtain, maintain, or pay for any insurance as required herein, DSPC may do so after notifying GT USA and may charge interest thereon, at an annual rate equal to Prime Rate plus 2.5 percent, from the date on which DSPC paid the monies, and GT USA shall, upon demand, reimburse DSPC for any premiums and interest incurred as a result thereof and such premiums and interest incurred by DSPC shall constitute, for purposes of this Agreement, Additional Fees.

### **Section 13.3 Terms and Conditions**

The insurance policies obtained and maintained by GT USA pursuant to this ARTICLE 13 shall be in a form and with insurers reasonably acceptable to DSPC, and, in addition to and not in substitution of the other terms and conditions required under this ARTICLE 13, contain the following terms and conditions:

(a) Property Loss Policies Endorsements. All property insurance policies shall contain an endorsement that the proceeds of any loss shall be made payable to DSPC or such Escrow Agent, savings bank, savings and loan association or commercial bank or trust company, designated by GT USA and approved by DSPC, and appointed in accordance with the terms of this Agreement. All such insurance proceeds shall be held as agreed upon by GT USA and DSPC in trust for them and such proceeds shall be used and applied (i) in the Restoration, reconstruction or replacement of the loss or damaged property for which such insurance moneys are payable hereunder in accordance with the applicable provisions of this Agreement or (ii) in the redemption of bonds to the extent such proceeds are related to loss or damaged property financed by such bonds.

(b) Primary Policies. All insurance policies shall provide that they are primary and shall not call upon any contribution by any insurance (including self-insurance) carried by DSPC.

(c) Additional Insureds. DSPC shall be named by endorsement as an additional insured under the policies described in Section 13.1(a) through Section 13.1(l) and Section 13.1(n) (as applicable).

(d) Waiver of Subrogation. GT USA's insurance policies shall contain a waiver of subrogation in favor of DSPC to the maximum extent permissible by law. GT USA shall also cause its subcontractors and customers to maintain a waiver of subrogation in their insurance policies in favor of DSPC and GT USA to the maximum extent permissible by law.

(e) No Cancellation Without Notice. Each insurance policy and bond required under this ARTICLE 13 shall contain a provision that the insurer shall provide DSPC with thirty (30) days prior written notice of any cancellation or reduction of or material change to the policy.

(f) Severability of Interest/Cross Liability Endorsement. Each liability insurance policy required under this Article shall include a severability of interest or cross liability endorsement, reading generally as follows:

"Cross Liability: In the event of one of the assureds incurring liability to any other of the assureds, this policy shall cover the assured against whom a claim is or may be made in the same manner as if separate policies had been issued to each assured. Nothing contained herein shall operate to increase underwriters' limit of liability."

#### **Section 13.4 Deductibles, Co-Insurance and Self-Insured Retentions**

Deductibles, co-insurance and self-insured retentions shall be in accordance with prevailing market conditions and practices from time-to-time, and subject to approval by DSPC, which approval shall not be unreasonably withheld, delayed or conditioned. GT USA agrees that for any such deductible or self-insured retention amount, GT USA shall provide to DSPC defense and indemnification at least equal to the defense and indemnification to which DSPC would be entitled as an additional insured had GT USA provided the above specified coverages respectively. GT USA's provision of such defense and indemnification to DSPC includes cases where such defense and indemnification would be required under said insurance policy forms for claimed loss, damage, injury or death which was caused solely by the active or passive negligence or other wrongful conduct of DSPC.

#### **Section 13.5 DSPC's Right to Modify**

DSPC shall have the right to add, modify, delete, alter or change insurance coverage requirements set forth in this ARTICLE 13 to reflect known material changes in insurance coverages for comparable maritime ports or operations comparable to Permitted Operations, provided that GT USA shall not have any obligation to procure or maintain at its cost any additional insurance unless an independent insurance consultant shall have delivered to GT USA its opinion to the effect that the additional coverages are required pursuant to the above-stated criteria and such additional coverages are commercially available.

#### **Section 13.6 Evidence, Renewal, Acceptance and Valuation**

GT USA shall deliver, prior to the Commencement Date, evidence of all insurance policies described herein to the reasonable satisfaction of DSPC, including certificates of insurance with declarations, schedule pages and all endorsements evidencing coverage and specifically including all required additional insured endorsements and a listing of policy



exclusions. GT USA shall provide to DSPC at least thirty (30) days prior to the expiration of any such policy an endorsement showing that such insurance coverage has been renewed or replaced. Failure to submit the required certificates of insurance or endorsement to DSPC shall automatically constitute default hereunder without any notice to cure and shall continue until a satisfactory certificate or endorsement, as applicable, is provided or DSPC is reimbursed under Section 13.2 above. Acceptance by DSPC of such evidence of insurance shall not constitute agreement by DSPC that the policy or policies are in compliance with the provision of this Agreement. At DSPC's request, GT USA shall promptly provide to DSPC a full, true and complete copy of each policy and amendments required to be maintained hereunder. Further, GT USA shall deliver promptly to DSPC copies of all valuations of new Leasehold Improvements and shall obtain increased coverage for all applicable insurance policies required hereunder to the extent affected by the new Leasehold Improvements.

#### **Section 13.7 Preservation of Insurability**

GT USA covenants and agrees that nothing will be done or omitted to be done by GT USA or any party for whom it is responsible in Law as a result of which the Premises and/or Leasehold Improvements are rendered uninsurable or increases the level of risk for DSPC's insurance coverage.

#### **Section 13.8 Liability**

In the event that GT USA fails to maintain insurance as stipulated, or if GT USA's insurance policy or policies prove to be defective in any form, GT USA shall be held liable to the same extent as if it were the underwriter of such insurance policy or policies.

#### **Section 13.9 No Limitation on Indemnities by GT USA**

The limits and types of insurance required to be carried by GT USA hereunder, or actually carried by GT USA, shall not define or limit the indemnity obligations of GT USA under this Agreement.

#### **Section 13.10 Market Adjustment**

The amounts of coverage required under this ARTICLE 13 shall be reviewed, and if deemed necessary by DSPC in its reasonable judgment, adjusted each succeeding fifth (5<sup>th</sup>) anniversary of the Commencement Date in accordance with then-prevailing market conditions.

### **ARTICLE 14** **GUARANTY**

#### **Section 14.1 Guaranty**

In consideration of DSPC's consent to enter into this Agreement, irrespective of the ownership of GT USA, at all times during the Term, GT USA, or if GT USA is financially unable to obtain a Letter of Credit (as defined below), then GT Americas, GT USA or the ultimate parent of any other Equity Participants in GT USA, shall guarantee performance (including financial and non-financial obligations) of GT USA's obligations under this Agreement by issuing an irrevocable letter of credit or by obtaining a surety bond (each, a "Letter of Credit"), in either case, in substantially the form attached hereto as APPENDIX 8 or in

such other form as may be reasonably agreed to by DSPC, provided that the Letter of Credit shall at a minimum (i) be in an amount that is not less than Fifteen Million Dollars (\$15,000,000), (ii) have a term of two (2) years until GT USA provides evidence reasonably satisfactory to DSPC that GT USA has invested at least One Hundred Fifty Million Dollars (\$150,000,000) in capital improvements at the Premises, and a term of one (1) thereafter, and (iii) be provided by a DSPC approved United States financial institution; and provided, further, that the Letter of Credit shall be perpetually renewed on the same terms for the duration of the Term and in the event the Letter of Credit is drawn upon during the Term, it shall be immediately replaced by GT Americas, GT USA or the ultimate parent of any other Equity Participants in GT USA. In the event the Letter of Credit is set to expire in fewer than thirty (30) days and DSPC has received a notice of non-extension from the issuer thereof, DSPC is hereby authorized to draw on the Letter of Credit as cash collateral to secure the contingent obligations of GT USA under this Agreement and to satisfy them as they become absolute and due; provided that DSPC shall account to GT USA for any proceeds that are not so used. GT USA, GT Americas or the ultimate parent of any other Equity Participants in GT USA, as applicant under the Letter of Credit, hereby agree to waive any challenge to a draw made by DSPC against the Letter of Credit based on a GT USA Default, including, without limitation, failure to pay the Concession Fee or any other breach of this Agreement. The foregoing persons shall be jointly and severally liable for fulfilling the obligations set forth in this ARTICLE 14. Notwithstanding any provision in this ARTICLE 14 to the contrary, DSPC hereby acknowledges and agrees that no provision in this ARTICLE 14 is intended to prohibit or otherwise restrict GT USA's ability to dispute with DSPC whether a GT USA Default or other breach under this Agreement has occurred that was the basis for drawing on the Letter of Credit, which shall be subject to the dispute resolution procedures set forth in ARTICLE 19 of this Agreement.

## **ARTICLE 15**

### **LIABILITY AND INDEMNIFICATION**

#### **Section 15.1 Indemnity**

(a) GT USA shall indemnify, protect, defend and save harmless DSPC from and against all suits, actions, claims, demands, damages, losses, expenses and costs of every kind and description (including attorneys' fees) to which DSPC may be subjected to by reason of GT USA's or its officers, agents, representatives or employees, contractors, sub-contractors, lessees or sublessees, customers, invitees or licensees or any of their employees, contractors or agents ("GT USA Responsible Persons") performance of the Permitted Operations or occupation or use of the Premises and Assets, including, without limitation, by reason of injury to or death of persons, by reason of injury or damage to, or destruction of property, or by failure to act in compliance with the Shipping Act, or any breach by GT USA or an Affiliate of GT USA of this Agreement, regardless of whether such suits, actions, demands, damages, losses, costs and expenses be against or sustained by DSPC or be against or sustained by others to whom DSPC may become liable. For the avoidance of doubt, GT USA shall have the obligation to indemnify, protect, defend and save harmless DSPC from and against all suits, actions, claims, demands, damages, losses, expenses and costs of every kind and description to which DSPC may be subjected to due to third-party challenges to the legality or enforceability of this Agreement or the transactions contemplated herein relating



to open access to the Port by GT USA, claims under the Shipping Act or any other claim relating to open access, but excluding any challenge based on the approval and implementation of this Agreement's failure to comply with Chapter 87 of Title 29 or other applicable law. GT USA's indemnity obligations under this Section 15.1 are in addition to GT USA's indemnity obligations provided in Section 6.1(c), Section 6.7 and ARTICLE 16. Carrying any insurance policy, including inadequate or deficient policies, or failing to carry the insurance required under this Agreement shall in no way absolve or release GT USA from its obligations under this ARTICLE 15.

(b) DSPC shall indemnify, protect, defend and save harmless GT USA from and against all suits, actions, claims, demands, damages, losses, expenses and costs of every kind and description to which GT USA may be subjected by reason of injury to or death of persons or by reason of injury or damage to, or destruction of property of any person, firm or corporation occasioned wholly or in part by any negligent act or omission of DSPC or its officers, agents, representatives or employees, or any breach by DSPC of this Agreement. For the avoidance of doubt, DSPC shall have the obligation to indemnify, protect, defend and save harmless GT USA from and against all suits, actions, claims, demands, damages, losses, expenses and costs of every kind and description to which GT USA may be subject to due to third-party challenges to the legality or enforceability of this Agreement or the transactions contemplated herein as against GT USA based on the approval and implementation of this Agreement's failure to comply with Chapter 87 of Title 29 or other applicable law.

#### **Section 15.2 Liens**

GT USA shall defend, indemnify and hold harmless DSPC against all liens and charges of any kind or nature that may at any time be established against the Premises or any improvements thereon or any part thereof or any Assets as a consequence of any act or omission of GT USA or any GT USA Responsible Persons.

#### **Section 15.3 Defense Against Suits**

GT USA shall promptly pay any and all costs or expenses (including consultant fees and attorneys' fees) that may be incurred by DSPC as well as any judgments or decrees in favor of DSPC:

(a) In enforcing any obligations of GT USA under the covenants, terms or provisions of this Agreement;

(b) In obtaining possession of the Premises as the result of any termination of this Agreement by DSPC following a default by GT USA;

(c) In defending any suit or proceeding brought against DSPC for the violation by GT USA or any GT USA Responsible Persons of any Law;

(d) In defending any action or suit for damages because of any failure, neglect or default on the part of GT USA in connection with the performance of its obligations under this Agreement; and

(e) Resulting from claims asserted by any GT USA Responsible Persons irrespective of the negligence or other fault of DSPC.

**Section 15.4 Notice of Damage or Injury**

In the event of an event or series of related events causing death, serious injury to persons or damage to property on the Premises, including to the property of others on the Premises, reasonably estimated to exceed Five Hundred Thousand Dollars (\$500,000), GT USA shall promptly notify DSPC in writing and shall promptly thereafter furnish to DSPC copies of all factual reports and factual portions of any other reports given to GT USA's insurance carrier or carriers or any Governmental Authority and any additional information regarding such event required by DSPC.

**Section 15.5 Survival**

The obligations and responsibilities of GT USA set forth in this ARTICLE 15 shall survive the Expiration Date or Termination Date, as applicable.

**ARTICLE 16**

**ENVIRONMENTAL AND SAFETY MATTERS**

**Section 16.1 GT USA's Responsibilities**

(a) GT USA shall ascertain and comply with all Environmental Laws related to GT USA's performance of its obligations pursuant to this Agreement and/or GT USA's use and occupancy of the Premises. GT USA shall keep up-to-date records at the Premises of all environmental permits and compliance with all regulatory requirements and give DSPC access to said records upon reasonable request.

(b) GT USA shall establish and maintain a program of compliance with all applicable Environmental Laws, and shall deliver to DSPC a copy of any printed or electronic data setting forth GT USA's program of compliance, as well as any modifications or revisions to said program during the Term. GT shall have and maintain emergency response and environmental management plans, a Spill Prevention Control and Countermeasure Plan, up-to-date plans for oil/hazmat spill response, heavy weather preparedness, including a high wind plan for cranes and similar equipment, facility evacuation, and fire and life safety response and such other emergency response and environmental management plans as DSPC may require, and a dust control and air emissions plan. GT shall maintain all fire suppression and life safety systems in compliance with applicable Laws.

(c) GT USA shall, and shall require its lessees and sublessees to, apply for and maintain all applicable federal, state, and local permits required by Environmental Laws, and shall take reasonable measures to ensure that all GT USA Responsible Persons and any other entrants upon the Premises (other than employees or representatives of DSPC) comply with all applicable Environmental Laws.

(d) GT USA shall monitor the compliance of all GT USA Responsible Persons and any other entrants upon the Premises (other than employees or representatives of



DSPC) with Environmental Laws and shall use its reasonable best efforts to halt, report, address, mitigate, remediate, and correct any incident of non-compliance as required by Environmental Laws.

(e) GT USA shall not cause or permit any Hazardous Materials to be generated, treated or stored on or about the Premises or transferred to the Premises, in contravention of any Environmental Laws.

(f) GT USA shall comply, and shall require all GT USA Responsible Persons and other entrants to the Port to comply with all permits that apply to the Premises or operations at the Port.

#### **Section 16.2 Existing Conditions, 120% Threshold and Monitoring Costs**

(a) Except as otherwise provided in this Agreement, DSPC shall be liable for any environmental conditions existing at the Premises as of the date of this Agreement, other than relating to the Pigeon Point Property, and such conditions shall be referred to as an "Existing Condition".

(b) Notwithstanding subsection (a) above, GT USA shall be responsible for any costs for Environmental Remediation at the Premises arising from Existing Conditions that result in an increase up to twenty percent (20%) in excess of the Industry Standard Costs for the Delaware/Philadelphia region as of the date such Environmental Remediation is undertaken (the "120% Threshold"). In the event the 120% Threshold is exceeded, and such increased costs are due solely to Environmental Remediation of Existing Conditions, neither Party shall be automatically liable for any costs in excess of the 120% Threshold. In such case, the Parties shall enter into a mutual review in good faith to determine a fair and equitable resolution, which may include how to equitably revise GT USA's operational and capital expenditure obligations under this Agreement (a "Mutual Environmental Review") to account for the increased costs that would be incurred in connection with the continued development by GT USA. In the event the parties cannot come to an agreement after any Mutual Environmental Review required under the terms of ARTICLE 16, the Parties shall follow the dispute resolution procedures set forth in ARTICLE 19 to establish a fair and equitable resolution with the arbitrator or court considering such factors as he, she or it shall determine, including, without limitation, the Concession Fees that have been paid or are to be paid to DSPC, the revenue to GT USA based on current volumes and GT USA's capital expenditure requirements under this Agreement to determine whether and how to proceed with the proposed development.

(c) DSPC agrees that solely to the extent it is able to recover insurance proceeds from the Beazley Insurance Policy for unknown conditions at Edgemoor, DSPC shall apply such proceeds to cover any costs related to Existing Conditions that GT USA would otherwise be responsible for pursuant to subsection (b) above. Nothing in this subsection (c) shall be deemed to be a waiver of the Mutual Environmental Review required after the 120% Threshold has been reached.

(d) The Parties further agree that, notwithstanding anything to the contrary herein, in the event that GT USA plans to disturb any portion of the Premises that could result in increased development costs or other liability or mitigation obligation arising from an Existing Condition, GT USA agrees to coordinate with DSPC, prior to any such disturbance, to reformulate the development plan to mitigate environmental, operational and financial costs to all Parties to the greatest extent possible. If DSPC's prior written consent has not been obtained for an improvement or change which could trigger a Mutual Environmental Review or any other liability or mitigation obligation relating to an Existing Condition, GT USA shall be responsible for any costs, including remediation and mitigation expenses, for or related to correction or abatement of any Existing Condition in connection with specific activity.

(e) Notwithstanding subsection (a) above, GT USA further agrees (i) to assume any environmental related monitoring costs, whether now or hereafter existing, at the Existing Port as of the Commencement Date and (ii) to assume any environmental related monitoring costs, whether now or hereafter existing, at Edgemoor upon the commencement of construction by GT USA at Edgemoor but no later than the Outside Construction Date.

(f) Notwithstanding subsection (a) above, in the event DSPC is required to spend more than the Concession Fee Differential in any calendar year in connection with the investigation, testing, feasibility study, risk assessment, treatment, removal, disposal, reuse, handling, transport, clean up, remediation, containment, capping, encapsulating, mitigation, or monitoring of any Non-Development Related Existing Conditions, the parties shall enter into a Mutual Environmental Review to determine how these additional costs should be handled. In the event the parties cannot come to agreement after any Mutual Environmental Review, the Parties shall follow the dispute resolution procedures set forth in ARTICLE 19 to establish a fair and equitable resolution with the arbitrator or court considering such factors as he, she or it shall determine, including without limitation, the Concession Fees that have been paid or are to be paid to DSPC, the revenue to GT USA based on current volumes and GT USA's capital expenditure requirements under this Agreement to determine whether and how to proceed with the proposed development.

### **Section 16.3 Notification of Potential Liability Triggering Event**

. Within five (5) Business Days of receipt, or immediately in the case of an imminent or substantial endangerment to human health or the environment, each party hereto shall notify and provide the other party copies of all material, written notices, demands, lawsuits, or other correspondence relating to the following:

(a) The violation of any Environmental Law affecting the Premises, the use of the Premises or the Port;

(b) Any enforcement action relating to Environmental Laws affecting the Premises, the use of the Premises or the Port undertaken by any federal, state, or local governmental agency, or any private party;



(c) The institution of any lawsuit relating to Environmental Laws affecting the Premises, the use of the Premises or the Port by any governmental entity or any private party; or

(d) The service of a potentially responsible party demand letter covering environmental issues relating to the Premises, the use of the Premises or the Port from any private or governmental party.

#### **Section 16.4 Coordination with DSPC**

In the event of any incident of non-compliance with Environmental Laws respecting the Premises that is reportable to a regulatory agency pursuant to Environmental Laws, GT USA shall:

(a) Immediately deliver to DSPC (at address in Section 21.2) a copy of any report regarding such incident submitted to any regulatory agency; and

(b) Cooperate with DSPC or its designated agents or contractors with respect to any investigation of such reportable incident.

#### **Section 16.5 Liability and Indemnification for Certain Environmental Matters**

(a) GT USA shall conduct and complete all Response Actions necessary to correct any violation of Environmental Laws on, from, or affecting the Premises arising from any GT USA Contamination, but excluding any Non-Development Related Existing Conditions, in accordance with Environmental Laws.

(b) DSPC shall conduct and complete all Response Actions necessary to correct any violation of Environmental Laws on, from, or affecting the Premises arising from any Non-Development Related Existing Condition, but excluding any GT USA Contamination.

(c) GT USA accepts responsibility for all environmental liabilities arising from any GT USA Contamination resulting from and during its operation at the Premises and except as set forth in Section 16.2, or as could otherwise result from a Mutual Environmental Review.

(d) DSPC accepts responsibility for all environmental liabilities arising from any Non-Development Related Existing Condition, except as set forth in Section 16.2, or as could otherwise result from a Mutual Environmental Review.

(e) GT USA shall defend, indemnify, and hold harmless DSPC from and against all claims, lawsuits brought or threatened, government orders, demands, penalties, fines, liabilities, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, including, without limitation, attorney's and consultant fees, investigation and laboratory fees, court costs, and litigation expenses, arising out of or in any way related to (i) GT USA Contamination or (ii) any violation of Environmental Laws on,

from, or affecting the Premises or committed by GT USA Responsible Persons on or affecting the Port.

(f) DSPC shall defend, indemnify, and hold harmless GT USA from and against all claims, lawsuits brought or threatened, government orders, demands, penalties, fines, liabilities, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, including, without limitation, attorney's and consultant fees, investigation and laboratory fees, court costs, and litigation expenses, arising out of or in any way related to any Non-Development Related Existing Conditions.

(g) Without limiting its obligations under any other section of this Agreement, GT USA shall be solely and completely responsible for responding to and complying with any administrative order, request or demand relating to potential or actual violations of Environmental Laws relating to GT USA Contamination, where such order, request or demand names GT USA alone, or names both GT USA and DSPC. The responsibility conferred under this section includes but is not limited to responding to any such order, request or demand and defending against any assertion of DSPC's financial responsibility or individual duty to perform. GT USA shall assume any liabilities or responsibilities which are assessed against DSPC in any action described under this subsection (g). Notwithstanding any provisions of this Section 16.5, DSPC retains the right to defend itself in any action or actions which are based upon or in any way related to GT USA Contamination. In any such defense of itself, DSPC shall select its own counsel, at GT USA's expense.

#### **Section 16.6 Pigeon Point Option**

If GT USA shall cause DSPC to exercise its option to acquire the Pigeon Point Property, GT USA shall assume all environmental monitoring costs for such property and shall be responsible for, and shall indemnify and hold DSPC harmless from, all costs at or arising from the Pigeon Point Property, regardless of whether or not such costs relate to existing environmental conditions at the Pigeon Point Property.

#### **Section 16.7 Inspection by DSPC**

DSPC shall have the right, at reasonable times and upon reasonable prior notice or immediately in the case of an imminent or substantial endangerment to human health or the environment, to inspect the Premises in order to verify compliance with this ARTICLE 16 and to inspect all records that GT USA maintains as required by Environmental Laws and this ARTICLE 16.

#### **Section 16.8 VCP Agreement**

DSPC and DNREC are parties to that certain Voluntary Clean-Up Program Agreement dated September 22, 2017 (the "VCP Agreement"). As of the date hereof, no work has been performed under the VCP Agreement. DSPC and GT USA agree to work together to transition the Existing Port to a brownfield site pursuant to 7 Del. C. § 9121 et. seq. Upon such transition, DSPC shall withdraw from the VCP Agreement. Nothing herein shall be construed to modify the allocation of environmental liability between the Parties as set forth in this Article 16 or to



require DSPC to remain in the VCP Agreement if DNREC determines that GT USA cannot convert the Existing Port to a brownfield site.

**Section 16.9 Survival**

The obligations and responsibilities set forth in ARTICLE 16 shall survive the expiration or any earlier termination of this Agreement.

**ARTICLE 17**  
**TRANSITION AND HANDBACK PROCEDURES**

**Section 17.1 Transition**

During the last twelve (12) months of the Term, GT USA shall cooperate with DSPC and any proposed subsequent tenant or operator of the Premises identified by DSPC to ensure the orderly transition of the Premises upon the Expiration Date, including, without limitation, providing tours to, participating in transition meetings with, and providing relevant non-confidential information to, DSPC or such subsequent tenant upon the reasonable request of DSPC.

**Section 17.2 Handback Requirements**

(a) General. At the earlier of the Expiration Date or Termination Date (collectively for this ARTICLE 17, "Handback Date"), GT USA shall return the Premises and, in addition, transfer, remove or sell the Assets to DSPC as provided in this ARTICLE 17 ("Handback").

(b) Premises. On the Handback Date, GT USA shall return the Premises to DSPC, free and clear of all encumbrances, in accordance with the terms of this ARTICLE 17.

(c) Assets. On or following the Handback Date, GT USA shall convey title to any Original Assets conveyed to GT USA, free and clear of all encumbrances, at no additional cost to DSPC. GT USA shall, at DSPC's sole discretion, and in accordance with Section 2.8 of this Agreement, (i) convey the After-Acquired Assets, free and clear of all encumbrances, to DSPC in accordance with Section 17.9 below; or (b) remove After-Acquired Assets from the Premises at GT USA's expense.

(d) Minimum Condition. On the Handback Date, the Premises and the Assets (to the extent that DSPC has designated such Assets for purchase) shall meet the Minimum Condition.

(e) Obligation to Invest. Provided the Basic Condition is met, GT USA shall have no obligation to invest capital in the Premises in the last fifteen (15) years of the Term without DSPC's consent to repurchase such capital expenditure at the market value at the expiration of the Term.

Section 17.3 Handback Activities

(a) Within the period between thirty (30) and twenty-four (24) months prior to the scheduled Handback Date, as such Handback Date may be extended ("Handback Engineer Selection Date"), each Party hereto shall appoint an engineering team (which may include an engineering consultant engaged by each party hereto at its sole cost) to serve as each of such Party's Handback engineering team (each, a "Handback Engineer"). The Parties shall jointly appoint an Independent Engineer within thirty (30) days after the appointments of the Handback Engineers.

(b) Both Handback Engineers, at the sole cost and expense of each Party, shall inspect the Premises and any Assets being transferred to DSPC under this ARTICLE 17, no later than two (2) months after the Handback Engineer Selection Date, and jointly certify to the condition of the Premises, and any applicable Assets no later than thirty (30) days after such joint inspection ("Initial Inspection Report") and propose a joint plan, if applicable, to bring the condition of the Premises, and any applicable Assets, to at least the Minimum Condition no later than forty (40) days after such joint inspection ("Handback Plan"). The Handback Plan shall specify particular repairs, replacements and other work required to bring the condition of the Premises, and any applicable Assets, to at least the Minimum Condition ("Reinstatement Work"). If the two Handback Engineers, cooperating in good faith with one another, are unable to comply with this ARTICLE 17, then either Party shall have the right to require, upon notice to the other Party, that the Independent Engineer resolve any dispute between Handback Engineers, and the Independent Engineer's resolution of any such dispute shall be binding on the Parties. The Independent Engineer shall deliver copies of its reports and resolutions to both GT USA and DSPC within thirty (30) days of such notice.

(c) The activities to be performed by the Handback Engineers and/or Independent Engineer, as applicable, pursuant to this ARTICLE 17 shall include the following, and the Parties shall fully cooperate with each other, and the Independent Engineer, if applicable, in such regard, including providing such documentation and making the Premises, and any applicable Assets, available for such inspections:

(i) examination of maintenance records and all "as-built" drawings, plans, other drawings, specifications and models prepared in connection with any Leasehold Improvements and otherwise applicable to the Premises;

(ii) preparation of a detailed Initial Inspection Report;

(iii) examination of maintenance facilities and documentation; and

(iv) follow-up inspections and reviews of the completion and quality of the Reinstatement Work, and progress reports delivered to DSPC and GT USA at least every month and at such other times set forth for the completion of the stages of Reinstatement Work in the Reinstatement Schedule, which specify (A) whether the Reinstatement Work is proceeding in accordance with the Reinstatement Schedule, (B) any deficiencies in the Reinstatement Work or Reinstatement Schedule, (C) any key issues affecting the completion of the Reinstatement



Work, and (D) an assessment of the completion level of and estimation of time to complete the Reinstatement Work.

(d) All furniture, furnishings, computers, telephones, office supplies and similar property used to operate the Port by GT USA shall become the property of DSPC, at no additional cost, upon the earlier of the Expiration Date or Termination Date; provided, however, at DSPC's option, any item of such property shall remain the property of GT USA, and GT USA shall, at its expense, remove any such property that remains the property of GT USA no later than sixty (60) days following the earlier of the Termination Date or Expiration Date, and shall repair any damage caused by such removal.

#### **Section 17.4 Reinstatement Schedule and Estimated Reinstatement Costs**

(a) Within one hundred and twenty (120) days after receipt of a copy of the Handback Plan, GT USA will provide to DSPC a report (the "Reinstatement Plan") setting out:

(i) GT USA's proposals as to the Reinstatement Work;

(ii) GT USA's proposals as to the schedule for the carrying out of the Reinstatement Work, which shall be completed within three (3) months prior to the Handback Date (the "Reinstatement Schedule"); and

(iii) the Estimated Reinstatement Costs.

(b) DSPC and, if applicable, the Independent Engineer may, within sixty (60) days after receipt of the Reinstatement Plan, by notice to GT USA, make reasonable objections to GT USA's proposals concerning any or all of the Reinstatement Work, the Reinstatement Schedule and the Estimated Reinstatement Costs as set out in GT USA's report ("DSPC's Objection Notice"). DSPC's Objection Notice shall give details of both the grounds for such objection and DSPC's and, if applicable, the Independent Engineer's, proposals concerning the Reinstatement Work and Reinstatement Schedule and its estimate of the Estimated Reinstatement Costs.

(c) Upon agreement, through the Independent Engineers and/or Handback Engineers, on the Reinstatement Work, the Reinstatement Schedule and the Estimated Reinstatement Costs, GT USA will carry out, or arrange for the carrying out of, the Reinstatement Work in accordance with the Reinstatement Schedule, in each case at its own cost notwithstanding that the actual cost of the Reinstatement Work ("Reinstatement Costs") may be higher than the Estimated Reinstatement Costs.

(d) The agreement of DSPC to any Reinstatement Work, Reinstatement Schedule or Estimated Reinstatement Costs, the participation of DSPC in the Initial Inspection Report or the Handback Plan, or the complete or partial carrying out of the Reinstatement Work (whether revised or otherwise) will not relieve or absolve GT USA from:

(i) its obligation to undertake the Reimbursement Work;

1914 (ii) its obligation to provide the Handback Guaranty; or  
1915 (iii) any obligation to conduct any other inspection or perform any  
1916 other work in accordance with, or to otherwise comply with, its obligations under this  
1917 Agreement.

1918 (e) GT USA shall ensure on or before the Handback Date that the Basic  
1919 Conditions are satisfied with respect to any Reinstatement Work and that all contractors  
1920 carrying out the Reinstatement Work provide a two (2) year warranty concerning such work,  
1921 or, if unavailable at commercially reasonable prices, such warranty as may be reasonably  
1922 available in the marketplace, such warranties expressly transferring to DSPC or any  
1923 successor tenant or operator of the Premises designated by DSPC.

1924 **Section 17.5 Handback Guaranty**

1925 (a) Within seven (7) days after delivery of the Reinstatement Plan to  
1926 DSPC, GT USA shall provide DSPC a Handback Guaranty, which DSPC may draw upon in  
1927 accordance with Section 17.5(b) below. If DSPC's Handback Engineer or, if applicable, the  
1928 Independent Engineer, certifies to the substantial completion of a defined stage of the  
1929 Reinstatement Work, as defined in the Reinstatement Schedule, then GT USA may provide a  
1930 replacement Handback Guaranty to DSPC covering only the agreed upon Estimated  
1931 Reinstatement Costs remaining, uncertified Reinstatement Work, and the previously  
1932 delivered Handback Guaranty shall be refunded to GT USA.

1933 (b) If either (i) the Reinstatement Work is not certified to as substantially  
1934 complete by DSPC's Handback Engineer or, if applicable, the Independent Engineer, within  
1935 the time set forth in the Reinstatement Schedule, and in all cases, prior to the Handback Date,  
1936 or (ii) GT USA does not renew the Handback Guaranty within ten (10) days prior to its  
1937 termination if the Reinstatement Work is not completed by the Handback Date, as  
1938 determined by DSPC's Handback Engineer or, if applicable, the Independent Engineer, then,  
1939 in addition to all other remedies available to DSPC, including, without limitation, seeking  
1940 damages for interference with DSPC's re-use of the Premises or other DSPC property or GT  
1941 USA's liabilities as a holdover tenant, DSPC shall have the option, in its sole discretion, to  
1942 elect to draw upon and retain the Handback Guaranty in such amount that DSPC reasonably  
1943 determines equals amounts needed to complete or repair properly the Reinstatement Work  
1944 not so certified plus a reasonable estimation of DSPC's actual overhead and administration  
1945 costs reasonably likely to be incurred in connection with performing such work.

1946 **Section 17.6 Final Handback**

1947 Any Handback Guaranty remaining shall be refunded to GT USA at such time that  
1948 DSPC's Handback Engineer or, if applicable, the Independent Engineer certifies to the final  
1949 completion of the Reinstatement Work.

1950 **Section 17.7 Contract Closure Environmental Activities**

1951 (a) Preparation of Plan for Contract Closure Environmental Activities.  
1952 One (1) year prior to the Expiration Date or promptly upon notice of termination or a partial



recapture of a portion of the Premises pursuant to this Agreement, GT USA shall prepare a closure plan for conducting the Contract Closure Environmental Activities with respect to the Premises or such portion of the Premises upon a partial recapture, as applicable. GT USA shall submit the closure plan to DSPC.

(b) Performance of Contract Closure Environmental Activities. GT USA shall perform or cause to be performed all actions necessary to ensure that the Contract Closure Environmental Activities have been completed to the extent feasible prior to the Handback Date, including final inspection and testing, and shall provide to DSPC documentary evidence that the condition of the Premises satisfies the requirements under this ARTICLE 17. GT USA, at its own expense, shall repair any damage to the Premises or other DSPC property caused by such work.

(c) Survival. If GT USA does not complete the work under this ARTICLE 17 in a manner which leaves the Premises (or portion of the Premises in the case of a partial recapture) in the condition required hereunder, then GT USA's obligations under this ARTICLE 17 shall survive the scheduled Handback Date until completed. The survival of GT USA's obligations to complete any required Response Action or the Contract Closure Environmental Activities shall not relieve GT USA of any other legal liabilities owed to DSPC, including, without limitation, damages for interference with DSPC's re-use of the Premises or other DSPC property or GT USA's liabilities as a holdover tenant. DSPC shall grant GT USA all access and other cooperation reasonably necessary for GT USA to comply with these provisions.

#### **Section 17.8 Storage Tanks**

During the Term, DSPC may elect, by written notice to GT USA, given at any time during the period that is at least sixty (60) days, before the Expiration Date or in the event the Handback Date occurs as a result of the exercise of a termination right by a party under this Agreement, within thirty (30) days after the Termination Date, to require GT USA either (a) to remove any above ground storage tanks installed by GT USA on the Premises at the Handback Date, or (b) to leave any above ground storage tanks in place in operating condition. If DSPC gives notice of election to GT USA, GT USA shall handle the storage tanks in accordance with DSPC's intention as stated in its notice to GT USA. If no notice of election is given to GT USA, GT USA shall remove said storage tanks in accordance with Environmental Law. Any storage tanks installed by GT USA during the term shall be above-ground only, shall contain its own secondary confinement system and shall be in compliance with all Environmental Laws.

#### **Section 17.9 DSPC's Purchase Option**

(a) General. Not less than two (2) years prior to the Expiration Date or if this Agreement is terminated, to the extent feasible, prior to the Termination Date, GT USA shall notify DSPC of DSPC's option to purchase any After-Acquired Assets (including equipment, etc. but excluding any then-operational Original Assets and any pre-existing or newly constructed buildings or improvements on the Premises which shall revert automatically to DSPC at no cost to DSPC) then owned by GT USA in an amount equal to the Buy-Out Value applicable to such Asset(s) as of the Expiration or Termination Date; provided that, in the event of an early termination of this Agreement, such notice may be



given up to sixty (60) days after such termination. In the event DSPC so exercises its option to purchase any of the After-Acquired Assets, the purchase thereof shall be effective as of the Expiration Date (or in the event of early termination of this Agreement, effective within thirty (30) days after DSPC's election to purchase one or more of such After-Acquired Assets), with DSPC to pay the Buy-Out Value in immediately available funds on the effective date. Unless DSPC has already consented to repurchase any Asset as provided in this ARTICLE 17, DSPC shall have the right, in its sole discretion to select which Asset(s) it would like to purchase upon under this Section 17.9. Notwithstanding the foregoing, if termination of this Agreement is due to a DSPC Default, the After-Acquired Assets purchased by GT USA shall remain the property of GT USA after termination of this Agreement and shall be removed at GT USA's expense within sixty (60) days of such Termination Date and only the Original Assets shall be returned to DSPC.

(b) Purchase Agreement. Within thirty (30) days after DSPC's election notice, the Parties shall enter into a purchase agreement customary for such types of transactions, which purchase agreement shall include: (i) the effective date of the purchase; (ii) GT USA's duty to maintain such Asset(s) in good working order and condition until such date; (iii) DSPC's right to terminate the purchase agreement in the event of a material adverse change in the condition of the subject Asset(s) prior to such date; (iv) a provision that the purchase price of the subject Asset(s) shall equal the Buy-Out Value applicable to the subject Asset(s), as the case may be (and to the extent that the Buy-Out Value has not been determined within such 30-day period, it shall be determined consistent with the Buy-Out Value procedures in Section 17.9(c)), and such other customary terms and conditions, including, without limitation, any requirements of applicable Laws in effect at the time.

(c) Determination of Buy-Out Value. The "Buy-Out Value" shall be determined as set forth in this Section 17.9(c).

(i) The Buy-Out Value shall equal, for any given date, the fair market value of the subject Asset(s) as of such date, as determined pursuant to a written appraisal by an Independent Appraiser.

(ii) If the Parties fail to agree upon such a single Independent Appraiser within sixty (60) days after a Party requests the appointment thereof, then each Party shall appoint an appraiser (the "Party-Appointed Appraiser") and give the other Party written notice of the name thereof, with such notice to be provided not later than fifteen (15) days following receipt of the other Party's notice with respect thereto. If either Party shall not have notified the other in writing of the appointment of its Party-Appointed Appraiser in accordance with the foregoing, then the other Party shall be authorized to appoint a Party-Appointed Appraiser on such party's behalf. Each of the two Party-Appointed Appraisers shall then, within sixty (60) days, file in writing with each Party its determination of the fair market value of the subject Asset(s) as of such applicable date. Neither Party shall be entitled to challenge the determination of the fair market value. Any vacancy shall be filled by the party who made the original appointment.

(iii) If such two written appraisals assign a fair market value of the Asset(s) that is within 10% of one another, then the average of such two fair market value



determinations shall be deemed the Buy-Out Value, which shall control for all applicable purposes under this Agreement.

(iv) If such two written appraisals assign a fair market value of the Asset(s), that differs by more than 10% of one another, the two Party-Appointed Appraisers shall then appoint a third Independent Appraiser within thirty (30) days after the two Party-Appointed Appraisers determination of fair market value of the Asset(s). If the two Party-Appointed Appraisers so chosen shall be unable to agree upon the third Independent Appraiser within such thirty (30) days, the parties may file a petition with the American Arbitration Association in Wilmington, Delaware ("AAA") solely for the purpose of selecting a third appraiser who meets the qualifications stated above. Within sixty (60) days after the appointment of the third Independent Appraiser, the third Independent Appraiser shall file in writing with DSPC and GT USA its determination concerning the fair market value of the subject Asset(s) as of such applicable date, and the average of (A) the third Independent Appraiser's fair market value determination, and (B) the fair market value determination by the one of the two Party-Appointed Appraisers who is closest numerically to the fair market value determination of the third Independent Appraiser, shall be deemed the Buy-Out Value, and neither Party shall be entitled to challenge such determination of the Buy-Out Value, which shall control for all applicable purposes under this Agreement.

(v) Each Party shall pay the costs and expenses of the Party-Appointed Appraiser appointed by it or on its behalf, together with 50% of the costs and expenses of the third Independent Appraiser. In the event of a single Independent Appraiser, each Party shall pay 50% of the costs and expenses of such single Independent Appraiser.

## **ARTICLE 18**

### **LEASEHOLD MORTGAGES**

#### **Section 18.1 Leasehold Mortgages**

The rights of GT USA to finance and mortgage the Premises, the membership interests in GT USA, this Agreement, the After-Acquired Assets, the Leasehold Improvements and/or the operations under this Agreement are governed solely by the following provisions in this Section 18. Notwithstanding anything herein to the contrary, GT USA agrees that it shall not mortgage, pledge or otherwise encumber the Original Assets.

#### **Section 18.2 DSPC's Security Interest in the Assets**

To secure the payment of all rentals and other sums of money becoming due from GT USA, DSPC shall have, and GT USA grants to DSPC, a security interest on the Assets now or hereafter located at the Premises. GT USA hereby authorizes DSPC to take any actions necessary to perfect such security interest. Notwithstanding the foregoing, provided that GT USA is not in default under this Agreement, DSPC agrees that its security interest in the After-Acquired Assets shall be automatically subordinated to any Leasehold Mortgagee. DSPC further agrees that, if so requested by any Leasehold Mortgagee, DSPC shall subordinate its security interest in the After-Acquired Assets by signing and delivering to the Leasehold Mortgagee a written agreement to subordinate such security interest, in form and substance reasonably acceptable to DSPC; provided, however, that in no event shall DSPC be required by such



Leasehold Mortgagee to undertake any obligations or responsibility to the Leasehold Mortgagee other than as set forth herein.

### **Section 18.3 GT USA's Right to Mortgage**

GT USA may, at any time and from time to time, with written notice to DSPC but without obtaining DSPC's consent, hypothecate, mortgage, grant or pledge its right, title or interest in the Premises, the membership interests in GT USA, this Agreement, and/or the Leasehold Improvements to any leasehold mortgagee ("Leasehold Mortgagee") as security for the repayment of any indebtedness incurred by GT USA, the proceeds of which shall be used solely for the Initial Payment, the purchase of Assets, the construction of Leasehold Improvements and the general development and operation of the Premises (each, a "Mortgage"). As used herein, the term "Leasehold Mortgagee" means any third-party U.S. financial institution or other domestic person or entity, unaffiliated with GT USA or its Affiliates, that from time to time provides arms-length secured financing to GT USA to be used solely as set forth above, and any agent, security agent, collateral agent, indenture trustee, loan trustee, loan participant or participating or syndicated lenders involved in whole or in part in such financing, and their respective representatives, successors and assigns. GT USA shall not enter into any Mortgage where the term exceeds the Term of this Agreement. DSPC agrees to use its commercially reasonable efforts to cooperate with GT USA in the effort to obtain financing from a Leasehold Mortgagee by GT USA, provided that DSPC incurs no expense or liability.

### **Section 18.4 Notice to DSPC**

If GT USA grants a Mortgage, it shall give notice of the same (including the name and address of the Leasehold Mortgagee, as the case may be) to DSPC; provided, however, that the failure to give such notice shall not constitute a GT USA Default but rather shall only have the effect of relieving DSPC from any obligation to the Leasehold Mortgagee until such notice is given. DSPC shall have no retroactive obligations to the Leasehold Mortgagee upon receipt of notice of the existence of such Leasehold Mortgagee. DSPC hereby consents to the recordation of the interest of the Leasehold Mortgagee in the official records of New Castle County, Delaware.

### **Section 18.5 Leasehold Mortgage Protections**

The Leasehold Mortgagee shall be entitled to the following rights and protections:

(a) A Leasehold Mortgagee shall have the right to do one, some or all of the following things: (i) assign its Mortgage; (ii) enforce its Mortgage; (iii) acquire GT USA's rights to this Agreement; (iv) take possession of and operate the Leasehold Improvements or the operations of GT USA under this Agreement; (v) assign, sublet or transfer some or all of this Agreement and the rights relating to the Premises to a third party, provided DSPC reasonably agrees to such third party; (vi) exercise any rights of GT USA hereunder or with respect to this Agreement; or (vii) cause a receiver, reasonably acceptable to DSPC, to be appointed to do any of the foregoing things. Upon acquisition of GT USA's rights under this Agreement by a Leasehold Mortgagee or any other third party who acquires the same from or on behalf of the Leasehold Mortgagee, DSPC shall recognize the Leasehold Mortgagee or such other party (as the case may be) as GT USA's proper successor, and



absent a default by such Leasehold Mortgagee or third party, this Agreement shall remain in full force and effect.

(b) Provided that DSPC has received proper written notice of such Leasehold Mortgagee, as a precondition to DSPC exercising any rights or remedies as a result of any real or alleged GT USA Default, DSPC shall deliver a duplicate copy of each and every notice of default to the Leasehold Mortgagee concurrently with delivery of such notice of default to GT USA.

(c) The Leasehold Mortgagee shall have the same period of time after receipt of a notice of default to remedy a GT USA Default, or cause the same to be remedied, as is given to GT USA after GT USA's receipt of a notice of a GT USA Default, plus, in each instance, the following additional time periods: (i) ten (10) days in the event of any monetary-related GT USA Default; and (ii) twenty (20) days in the event of any non-monetary-related GT USA Default; *provided, however*, that (a) such twenty (20) day period shall be extended for the time reasonably required by the Leasehold Mortgagee to complete such cure, including the time reasonably required for the Leasehold Mortgagee to obtain possession of the GT USA's leasehold interest in the Premises (the "Leasehold Estate"), institute foreclosure proceedings or otherwise perfect its right to effect such cure, provided that in no event shall such period be extended for more than 120 days after GT USA's initial receipt of notice of such default and (b) the Leasehold Mortgagee shall not be required to cure any non-monetary GT USA Default which cannot legally be cured (e.g., bankruptcy of GT USA) by such Leasehold Mortgagee ("Non-Curable Defaults"). The Leasehold Mortgagee shall have the right to substitute itself for GT USA and perform the duties of GT USA hereunder or with respect to this Agreement or the Leasehold Estate for purposes of curing such GT USA Default. DSPC expressly consents to such substitution, agrees to accept such performance, and authorizes the Leasehold Mortgagee (and its respective employees, agents, representatives or contractors) to enter upon the Premises to complete such performance with all of the rights and privileges of GT USA hereunder. DSPC shall not terminate this Agreement prior to expiration of the cure periods available to the Leasehold Mortgagee as set forth above. Further, (1) neither the bankruptcy nor the insolvency of GT USA shall be grounds for terminating this Agreement as long as the Concession Fees and all other amounts payable by GT USA hereunder are paid by the Leasehold Mortgagee in accordance with the terms hereof and the other obligations under this Agreement are performed by the Leasehold Mortgagee in accordance with the terms hereof and (2) Non-Curable Defaults shall be deemed waived by DSPC upon the Leasehold Mortgagee's completion of foreclosure proceedings or other acquisition of the Leasehold Estate.

(d) If any GT USA Default under this Agreement cannot be cured by the Leasehold Mortgagee without its obtaining possession of all or part of the Premises, then such GT USA Default shall nonetheless be deemed cured if: (i) within sixty (60) days after receiving notice from DSPC as set forth in subsection (b) above, a Leasehold Mortgagee acquires possession of the Premises, or commences appropriate judicial or nonjudicial proceedings to obtain the same; (ii) the Leasehold Mortgagee is prosecuting any such proceedings to completion with commercially reasonable diligence; and (iii) after gaining possession thereof, the Leasehold Mortgagee performs all other obligations of GT USA (other than in connection with Non-Curable Defaults) as and when the same are due in



2164 accordance with the terms of this Agreement. If the Leasehold Mortgagee is prohibited by  
2165 any process or injunction issued by any court or by reason of any action of any court having  
2166 jurisdiction over any bankruptcy or insolvency proceeding involving GT USA, as the case  
2167 may be, from commencing or prosecuting the proceedings described above, then the sixty  
2168 (60) day period specified above for commencing such proceedings shall be extended for the  
2169 period of such prohibition.

2170 (e) A Leasehold Mortgagee that does not directly hold an interest in the  
2171 Leasehold Estate, or that holds a Mortgage, shall not have any obligation under this  
2172 Agreement prior to the time that such Leasehold Mortgagee obtains title to the Leasehold  
2173 Estate. Further, in the event that a Leasehold Mortgagee elects to (i) perform GT USA's  
2174 obligations under this Agreement, (ii) continue GT USA's operations under this Agreement,  
2175 or (iii) acquire any portion of GT USA's right, title or interest in the Premises or under this  
2176 Agreement, then such Leasehold Mortgagee shall not have any personal liability to DSPC in  
2177 connection therewith, and DSPC's sole recourse in the event of default by such Leasehold  
2178 Mortgagee shall be to execute against such Leasehold Mortgagee's interest in the Leasehold  
2179 Estate and the Leasehold Improvements. Moreover, any Leasehold Mortgagee or other party  
2180 who acquires the Leasehold Estate pursuant to foreclosure or an assignment in lieu of  
2181 foreclosure shall not be liable to perform any obligations hereunder to the extent the same are  
2182 incurred or accrue after such Leasehold Mortgagee or other party no longer has ownership of  
2183 such Leasehold Estate.

2184 (f) DSPC shall not agree to any material modification or amendment of  
2185 this Agreement and shall not accept a surrender or termination of this Agreement outside the  
2186 terms of this Agreement; in each such case, without the prior written consent of each  
2187 Leasehold Mortgagee.

2188 (g) DSPC shall, within twenty (20) days after written request from GT  
2189 USA, or the existing Leasehold Mortgagee, execute and deliver thereto a certificate in  
2190 customary form or as otherwise reasonably acceptable to DSPC to the effect that (i) DSPC  
2191 recognizes such entity as a Leasehold Mortgagee under this Agreement and (ii) will accord to  
2192 such entity all the rights and privileges of a Leasehold Mortgagee hereunder.

2193 (h) DSPC shall not agree to hypothecate, mortgage, grant or pledge its  
2194 right, title or interest in the Premises, the Assets or the Leasehold Improvements (but  
2195 excluding DSPC's rights to the Concession Fees under the terms of this Agreement) without  
2196 the prior written consent of GT USA and each Leasehold Mortgagee, which consent shall not  
2197 be unreasonably withheld, conditioned or delayed.

## 2198 **ARTICLE 19**

### 2199 **DISPUTE RESOLUTION**

#### 2200 **Section 19.1 Dispute Resolution**

2201 The Parties shall attempt in good faith to resolve a dispute arising out of, relating to, or  
2202 in connection with this Agreement in the manner described in Section 10.8. If the attempt is  
2203 unsuccessful, the Parties may pursue additional remedies as described below. Statements made



by representatives of the Parties during informal dispute resolution procedures in Section 10.8 shall be considered part of settlement negotiations and shall not be admissible in evidence in any litigation proceeding without the mutual consent of both Parties.

#### **Section 19.2 Dispute Resolution Procedures**

(a) Arbitration in Delaware Chancery Court. If good faith negotiation pursuant to Section 10.8 above is deemed unsuccessful, then if the dispute can be arbitrated in the Court of Chancery of the State of Delaware pursuant to 10 Del. C. § 349, DSPC and GT USA agree that the dispute will be so arbitrated.

(b) Litigation in Delaware Court. If the dispute cannot be arbitrated in the Delaware Chancery, then each of the Parties hereby consents exclusively to the jurisdiction of the Courts of the State of Delaware and of the United States District Court for the District of Delaware for all purposes in connection with any action or proceeding that arises from or relates to this Agreement and agrees not to initiate any proceeding in any other jurisdiction, court or tribunal. Each Party hereby waives any objection it might have to personal jurisdiction of any such court and waives any rights it may have to personal service of summons, complaint, or other process in connection therewith, and agrees that service may be made by registered or certified mail addressed to it at the address provided in Section 21.2 hereof. Neither Party hereto shall commence any action in any other court or attempt to remove an action to any other court, it being agreed that any violation of this Section 19.2 may be specifically enforced by mandatory injunction because money damages would be an inadequate remedy. GT Americas and GulfTainer also consent to jurisdiction of the Courts of the State of Delaware and of the United States District Court for the District of Delaware for purposes of this Agreement.

### **ARTICLE 20 EMPLOYEES**

#### **Section 20.1 Union Employees**

(a)

(b)

**Section 20.2 Non-Union Employees**

(a) At least ten (10) days prior to the Commencement Date, GT USA shall make written offers for employment to all non-unionized DSPC employees at substantially similar compensation (considering base compensation/wages and benefits as a whole) as their respective compensation at the time of such offer and for a period of not less than twelve (12) months following the Commencement Date, subject to GT USA's right to terminate any employee prior to that date for performance related issues, as determined in their reasonable business judgment. Each such employee who accepts the offer of employment shall become a GT USA employee as of the Commencement Date. GT USA reserves the right to terminate any employee at-will at any time; *provided, however*, that with respect to any employee terminated other than for performance related issues, GT USA shall provide to such employee an amount equal to the employee's base compensation (meaning forty (40) hours per week) plus healthcare benefits as in effect immediately prior to termination for the remainder of the twelve (12) month period, except that such amounts may be offset against the Concession Fee Differential with respect to any such amounts owed for the period following the expiration of six (6) months following the Commencement Date until the last day of the twelve (12) month period.

(b) GT USA further agrees to provide DSPC's non-unionized employees employed on the Commencement Date priority in filling GT USA's non-union employment needs at the Premises in accordance with on-going business needs.

(c) A current list of non-union employees is attached hereto and incorporated herein by reference as APPENDIX 17. DSPC shall, prior to the Commencement Date, provide to GT USA an updated schedule listing, as of such date that includes the names, job classifications, years of service and other information necessary for the purposes of benefits enrollment and conversions.

(d) To the extent not inconsistent with the foregoing, GT USA's terms of employment shall include all applicable employment plans and policies in place at GT USA (or its Affiliates, as applicable) immediately prior to the Commencement Date, such as, by way of example, GT USA's drug and alcohol policy, insurance plans and retirement plans.

(e) GT USA shall cause all DSPC employees to be given credit for all service with DSPC for purposes of eligibility, vesting, benefit, accrual, vacation, severance and satisfaction of any waiting periods as well as for any similar purposes, under all employee benefit plans, programs and policies in which they are participants; provided, however, that the provisions of this Section 20.2(e) shall not apply to any new 401(k) plan offered by GT USA on or after the Commencement Date.

(f) GT USA shall comply with all Laws regarding equal opportunity. GT USA shall not, because of race, color, sex, religious creed, sexual orientation or national origin of any individual, refuse to hire or employ such individual, bar or discharge from employment such individual or otherwise discriminate against such individual, with respect to compensation, tenure, terms, conditions or privileges of employment. Further, GT USA shall make and shall cause its contractors to make a good faith effort to actively encourage



the participation of minorities and females in GT USA's and its contractors' development and/or operations at the Premises.

(g) DSPC hereby agrees that any audited actuarial pension and benefit plans of DSPC's employees as of immediately prior to the Commencement Date shall remain the responsibility of DSPC. For the avoidance of doubt, any benefit programs as of Commencement will be provided by GT USA, which shall be solely responsible for such benefit programs.

(h) GT USA hereby agrees that it will use commercially reasonable efforts to build a training academy for employees involving port operations and logistics within five (5) years following the Commencement Date.

## **ARTICLE 21**

### **GENERAL**

#### **Section 21.1 GT USA's Schedule of Rates**

GT USA is permitted to charge and collect all Operating Revenues in connection with the Permitted Operations. GT USA shall be entitled to establish and maintain throughout the Term its own tariff/schedule or marine terminal operator tariff/schedule. In the absence of a schedule or tariff of rates covering facilities or services provided by GT USA, the DSPC Tariff shall remain in full force and effect at the Premises, and applicable charges under the DSPC Tariff shall be assessed and collected by GT USA during such times. All of GT USA's charges relating to the Premises shall comply with applicable Laws.

#### **Section 21.2 Notices**

(a) Any notice or other communication permitted or required to be given under or pursuant to this Agreement shall be in writing sent as specified in Section 21.2(b) below to the representative of the party to whom such notice is to be given at the following locations respectively:

(i) If to DSPC:

Department of State  
Attn: Secretary of State  
820 N. French Street  
4th Floor  
Wilmington, DE 19801

with a copy to:

Morris, Nichols, Arsh & Tunnell LLP  
c/o Diamond State Port Corporation  
1201 N. Market Street  
P.O. Box 1347  
Wilmington, DE 19899-1347

2321  
 2322 (ii) If to GT USA:  
 2323 GT USA  
 2324 1 Hausel Road  
 2325 Wilmington, DE 19801  
 2326  
 2327 with a copy to:  
 2328 Gulfstream Company Limited  
 2329 Attn: Richard Blair, Group Head – Legal & Compliance  
 2330 Sarh Al Emarat Tower  
 2331 43rd floor  
 2332 Al Majaz  
 2333 P.O.Box 225  
 2334 Sharjah, UAE  
 2335 Tel: 0097165128888  
 2336  
 2337 or at such other location as either party shall advise by notice from time-to-time.  
 2338 (b) All notices provided for herein may be sent by Federal Express or other  
 2339 overnight courier service, personally delivered, or mailed registered or certified mail, return  
 2340 receipt requested or by such other method as the parties hereto may mutually agree upon. If  
 2341 a notice is personally delivered, sent by overnight courier service or sent by registered or  
 2342 certified mail, it shall be deemed given upon receipt or refusal of delivery.  
 2343 **Section 21.3 Audit Rights**  
 2344 GT USA shall maintain complete and accurate records sufficient to permit DSPC to audit  
 2345 accurately the cargo levels, including Minimum Volume, Initial Capital Expenditure Obligation,  
 2346 the Total Capital Expenditure Obligation, the Minimum Warehouse Capital Obligation and  
 2347 Concession Fees and shall retain such records for a period of seven (7) years on a rolling basis.  
 2348 DSPC shall have the right to inspect, or to cause its representatives to inspect, such records  
 2349 during normal business hours, which inspection may occur no more than two (2) times per year  
 2350 and only after five (5) Days prior written notice to GT USA. If it is ultimately determined that  
 2351 GT USA's representation to DSPC regarding cargo volume, capital expenditures or Concession  
 2352 Fees is in error by at least three (3%) percent, then GT USA shall pay the out-of-pocket audit  
 2353 fees incurred by DSPC for its inspection and audit of GT USA's records.  
 2354 **Section 21.4 Agent for Service of Process**  
 2355 GT USA, GT Americas and Gulfstream shall accept service of process with respect to any  
 2356 such claim when delivered by certified mail return receipt requested or by personal service via  
 2357 nationally recognized (in the United States) overnight carrier addressed to GT USA at its above-  
 2358 stated addresses or to its resident agent established by registration with the Secretary of State of  
 2359 the State of Delaware.  
 2360 **Section 21.5 Applicable Law**



This Agreement shall be construed and interpreted in accordance with the laws of the State of Delaware, except to the extent that United States federal law otherwise applies. All obligations of DSPC are subject to all applicable Law and appropriations by the Delaware General Assembly.

#### **Section 21.6 Headings**

All headings and captions appearing in this Agreement have been inserted for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision thereof.

#### **Section 21.7 Modification of Appendices**

The Parties acknowledge and agree that between the date hereof and the Commencement Date it may become necessary to add to, delete from or otherwise modify certain appendices hereto to reflect any changes in circumstances or other events that occur between the date hereof and the Commencement Date that would have been disclosed on such appendices had the change in circumstances or other event existed as of the Execution Date (e.g., list of current employees, litigation schedule, etc.) and to update the calculation of the Initial Payment. DSPC shall have the right to modify such appendices, provided that (a) such modifications may not be material to GT USA's interests, and (b) DSPC shall notify GT USA and provide copies of any such modifications to GT USA as promptly as practicable after DSPC becomes aware of the need for such modifications.

#### **Section 21.8 Entire Agreement; Amendment**

This Agreement and the agreements and contracts contemplated hereby constitute the entire agreement between the parties hereto with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, whether oral or written, between the parties, particularly including, without limitation, the request for offer process, the letter of intent and term sheet entered into by the Parties with respect to the matters contained in this Agreement. The making, execution and delivery of this Agreement by the parties have not been induced by any representations, statements, warranties or agreements other than those expressly set forth herein. This Agreement may be amended from time to time, but only by written amendment with the written consent of both DSPC and GT USA and may be subject to the approval of the Delaware General Assembly.

#### **Section 21.9 Successors and Assigns**

Subject to the terms in this Agreement, this Agreement shall be binding upon and inure to the benefit of each of the Parties and to their respective transferees, successors, and assigns.

#### **Section 21.10 Recordation of Agreement; Memorandum of Lease**

A Memorandum of Lease in the form of APPENDIX 9 shall be executed by the parties hereto concurrently herewith and GT USA or DSPC may record the same in the Office of the Recorder of Deeds in and for New Castle County, Delaware.

#### **Section 21.11 No Third Party Beneficiaries; No Brokers**

GT USA and DSPC agree that there are no third-party beneficiaries to this Agreement or any other Transaction Documents. GT USA acknowledges that Seabury Securities LLC has been engaged by DSPC as a broker in relation to this Agreement and the transactions contemplated hereunder, but DSPC acknowledges that GT USA shall have no liability relating to Seabury Securities or its affiliates. GT USA represents that it has engaged no broker and is liable to no such third party in relation to this Agreement or the transactions contemplated hereunder. GT USA agrees to indemnify, defend, and hold harmless DSPC and any property of DSPC from any liability (including reasonable attorneys' fees) or claim arising by, through any party making any such claim.

**Section 21.12 No Waiver**

No waiver hereunder by any Party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

**Section 21.13 Expenses**

Except as expressly provided herein, each Party shall pay its own expenses incurred in connection with this Agreement and the transactions contemplated hereby.

**Section 21.14 Time of Essence**

Time is of the essence in the performance of and the compliance with each of the provisions and conditions of this Agreement. All times provided in this Agreement for the performance of any act shall be strictly construed.

**Section 21.15 Severability**

Should any provision in this Agreement be illegal or not enforceable, it shall be considered separate and severable from this Agreement and the remaining provisions shall remain in force and be binding upon the parties as though the said provision had never been included.

**Section 21.16 DSPC-GT USA Relationship**

(a) Nothing contained in this Agreement, nor in any acts of the parties, shall be deemed to create a partnership or joint venture or similar agreement or like arrangement between the parties.

(b) DSPC and GT USA acknowledge their intent that this Agreement does not delegate to GT USA any governmental powers or duties vested in DSPC.

**Section 21.17 Sale of Premises by DSPC**

DSPC may sell or transfer all, but not less than all of the Premises, subject to the limitations in this Section. In the event DSPC sells or transfers all of the Premises and as a part of a transaction to assign its interest in and to this Agreement, and provided such buyer, transferee or assignee agrees to perform as lessor under this Agreement, then from and after the effective date of such sale, assignment, or transfer, DSPC has no further liability under this Agreement to GT USA except as to matters of liability which accrued and are unsatisfied as of



such effective date, it being intended that the covenants and obligations contained in this Agreement on the part of DSPC be binding on DSPC and its successors and assigns only during and in respect of their respective successive periods of ownership of the fee. DSPC shall be required to obtain any Leasehold Mortgagee's consent and GT USA's consent, which consent shall only be withheld on commercially reasonable grounds, for any sale, transfer or assignment of this Agreement to any independent third party. GT USA's and Leasehold Mortgagee's consent requirements hereunder expressly excludes any transfer, sale or assignment to the State of Delaware or any agency of the State of Delaware.

#### **Section 21.18 No Right to Holdover**

GT USA shall have no right to remain in possession of all or any part of the Premises after the earlier of the Termination Date or Expiration Date. GT USA shall have no right to holdover and no tenancy shall be created by implication or law. However, if GT USA fails to vacate and surrender possession of the Premises on or prior to the Termination Date or the Expiration Date, GT USA shall pay DSPC 200% of the average quarterly Concession Fee paid by GT USA over the eight (8) quarters prior to the Termination Date or the Expiration Date, for each quarter after the Termination Date or the Expiration Date that GT USA fails to surrender possession to DSPC, always subject to all fees being increased at the sole discretion of DSPC at any time during the holding over period and upon notice to GT USA. DSPC's receipt and acceptance of such Concession Fee as adjusted in this Section 21.17 shall not be construed as DSPC's consent to any holding over by GT USA. GT USA hereby agrees to indemnify and hold harmless DSPC from and against any and all Losses incurred by DSPC as a result of GT USA remaining in possession of all or any part of the Premises after the Termination Date or the Expiration Date. GT USA shall not interpose any counterclaim in any summary or other proceeding based on holding over by GT USA. Except as provided in this Section 21.17, all other terms and conditions of this Agreement shall apply during any period of holding over by GT USA.

#### **Section 21.19 Costs**

To the extent this Agreement contemplates any costs to be reimbursed or offset by either Party, such costs shall be the actual and reasonable costs incurred by the other Party.

#### **Section 21.20 Intellectual Property**

GT USA's intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise and all computer systems, including all hardware and software, that are incorporated into the Port facilities shall remain in the ownership of GT USA. Notwithstanding the foregoing, upon the earlier of the expiration or termination of this Agreement, GT USA agrees to provide or cause a third party to provide DSPC with a perpetual royalty free license for the intellectual property in use at the Port facilities to enable DSPC to continue operating the Port facilities in the manner they were operated in the five (5) years prior to the expiration or earlier termination of this Agreement.

#### **Section 21.21 Community Relations**

GT USA shall assist DSPC and the State of Delaware in developing positive community relations with regard to this Agreement and GT USA's operation of the Premises. GT USA shall

make best effort to enter into a community benefits agreement, setting forth the range of community benefits this Agreement will provide and any impact mitigations that may be undertaken to avoid displacement of long-time communities living in close proximity to the Premises.

**Section 21.22 Consents and Cooperation**

Unless expressly provided herein, any cooperation, consent or approval required shall not be unreasonably withheld, conditioned, delayed or conditioned.

**Section 21.23 Confidentiality**

To the extent, if any, not otherwise required by Law with respect to either or both DSPC and GT USA, and being particularly cognizant of both the publication by FMC of agreements like this one after being filed with the FMC, and DSPC being a public agency subject to extensive disclosure obligations under laws of the State of Delaware regarding agreements like this one as public records, neither DSPC nor GT USA shall during the Term (except in the proper performance of its obligations hereunder) or at any time after the Expiration Date or Termination Date, disclose to any person the terms of this Agreement, or use for any purpose any information which is marked private and/or confidential when received by a party, or which relates to the other party and/or the terms of this Agreement, and/or by its nature is reasonably ascertainable as being private and/or confidential. The foregoing restrictions shall not apply to any disclosure made with the prior written consent of either GT USA or DSPC, whichever is the non-disclosing party, or which was already known by the recipient party prior to disclosure by the disclosing party, or which is, or comes to be, in the public domain without fault of the recipient party, or which is disclosed by the recipient party to its professional advisers, or financial institutions or their representatives, or as required by Law or by the rules or regulations of any Governmental Authority having jurisdiction over DSPC, GT USA or the subject matter of this Agreement or any part hereof. Notwithstanding the foregoing, DSPC and GT USA shall cooperate on making public announcement of this Agreement on the Effective Date.

**Section 21.24 Rights and Remedies**

All rights and remedies of the Parties contained in this Agreement shall be cumulative and not alternative.

**Section 21.25 Qualification to do Business in Delaware**

At all times during the Term GT USA agrees to be and continue to be legally qualified to do business in the State of Delaware.

**Section 21.26 Authority**

Each individual executing this Agreement on behalf of a party represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such party.

**Section 21.27 Waiver of Jury Trial; Counterclaim**

DSPC AND GT USA HEREBY MUTUALLY WAIVE ANY AND ALL RIGHTS WHICH EITHER MAY HAVE TO REQUEST A JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (EXCEPT FOR THOSE INVOLVING PERSONAL



INJURY OR PROPERTY DAMAGE) ARISING OUT OF THIS AGREEMENT OR GT USA'S  
USE OR OCCUPANCY OF OR RIGHT TO USE OR OCCUPY THE PREMISES.

**Section 21.28 GT USA to Provide Information to DSPC**

(a) Upon request by DSPC, after the Commencement Date, GT USA shall provide, at GT USA's expense, to DSPC any information or documentation that DSPC requests from GT USA reasonably relating in any way to this Agreement, including without limitation, information to support any claim of force majeure, evidence of payment of taxes and utilities, and all documents that GT USA is to prepare and maintain under ARTICLE 16 of this Agreement.

(b) GT USA must provide DSPC upon the Commencement Date, and thereafter if requested by DSPC or if such information or documentation changes, the following relating to the safety and security of the Premises: (i) a copy of GT USA safety and emergency management plans, (ii) a point of contact for safety and security matters, and (iii) the name and telephone number of each representative of GT USA to be contacted in case of an emergency.

(c) GT USA must submit to DSPC upon the Commencement Date, a disaster preparedness plan in form and substance acceptable to DSPC, and must update the plan on a periodic basis at DSPC's request upon reasonable written notice. A representative of GT USA must attend each disaster preparedness meeting called by DSPC during the Term of this Agreement.

**Section 21.29 TIGER Grant Required Language**

GT USA, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Premises described in this Agreement for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, GT USA will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

**Section 21.30 Further Acts**

Each of the Parties hereto shall perform such further acts and execute such further agreements as may be required from time-to-time to give proper effect to the intent of this Agreement.

**ARTICLE 22**  
**DEFINED TERMS**

**Section 22.1 Definitions**

2554 As used in this Agreement, the following terms have the following meanings:

2555 "120% Threshold" has the meaning specified in Section 16.2(b).

2556 "AAA" has the meaning specified in Section 17.9(c)(iv).

2557 "Acquisition Agreement" means that certain Acquisition Agreement between  
2558 DSPC and the City of Wilmington dated as of September 1, 1995, as amended from time to time.

2559 "Additional Fees" has the meaning specified in Section 4.6.

2560 "Affiliate" means, with respect to GT USA, an entity that directly or indirectly  
2561 controls, is controlled by, or is under common control with GT USA, whether through share  
2562 ownership, a trust, a contract or otherwise of an Equity Participant.

2563 "After-Acquired Assets" has the meaning specified in Section 2.8.

2564 "Agreement" has the meaning specified in the Preamble.

2565 "Assets" has the meaning specified in Section 2.8.

2566 "Assign" or "Assignment" have the meanings specified in Section 5.1(a).

2567 "Assigned Contracts" means each contract identified in APPENDIX 2-4  
2568 attached hereto.

2569 "Assignee" has the meaning specified in Section 5.2.

2570 "Basic Conditions" has the meaning specified in Section 6.4(b).

2571 "Beazley Insurance Policy" means the pollution liability insurance naming  
2572 DSPC as the insured with policy number WIDE02170101 and a policy period through 27  
2573 February 2027.

2574 "Boxwood" means the Boxwood Road site commonly referred to as Tax Parcel  
2575 Nos. 07-042.10-055 and 07-042.20-010 located at 801 Boxwood Road, Wilmington, DE 19804,  
2576 which is a logistics facility owned as of the date hereof by Boxwood Industrial Park, LLC, a  
2577 subsidiary of Harvey Hanna & Associates, Inc.

2578 "Bulk Handling Permits" shall have the meaning set forth in Appendix 2(g)(iv).

2579 "Business Day" means any day other than a Saturday, a Sunday, or a day on  
2580 which commercial banks in Wilmington, Delaware are required or authorized to be closed.

2581 "Buy-Out Value" has the meaning specified in Section 17.9(c).

2582 "Casualty Costs" means the estimated or actual costs of repairs, alterations,  
2583 Restorations, replacement and rebuilding.



2584           **"Casualty Event"** means fire or other casualty of any kind or nature (including  
2585 any casualty for which insurance was not obtained or obtainable, but excluding a casualty caused  
2586 by a nuclear, chemical, biological or radioactive event), ordinary or extraordinary, foreseen or  
2587 unforeseen.

2588           **"Casualty Extension"** has the meaning specified in Section 7.5.

2589           **"Casualty Restoration Funds"** has the meaning specified in Section 7.2(c).

2590           **"CFIUS"** has the meaning specified in Section 1.2(b).

2591           **"CFIUS Approval"** has the meaning specified in Section 1.2(b).

2592           **"CFIUS Notice"** has the meaning specified in Section 1.2(b).

2593           **"Change of Control"** means, with respect to GT USA, whether accomplished  
2594 through a single transaction or a series of related or unrelated transactions and whether  
2595 accomplished directly or indirectly, any of:

2596                   (i) a change in ownership, as compared to the ownership as of the  
2597 Execution Date of this Agreement, so that 50% or more of the direct or indirect voting or  
2598 economic interests in GT USA are transferred to another entity or group of entities acting in  
2599 concert;

2600                   (ii) the power directly or indirectly to direct or cause the direction of  
2601 management, operations, controls and policy of GT USA, whether through ownership of voting  
2602 securities, by contract, management agreement, or common directors, officers or trustees or  
2603 otherwise, is transferred to another entity or group of entities acting in concert, or

2604                   (iii) the merger, consolidation, amalgamation or business combination  
2605 of GT USA, in circumstances where GT USA is not the surviving corporation, or sale of  
2606 substantially all of the assets of such entity.

2607           For purposes of this definition of "Change of Control", "indirect" includes any  
2608 Change of Control of GT Americas,

2609           **"City of Wilmington"** means the City of Wilmington, New Castle County,  
2610 Delaware.

2611           **"Closing"** means the closing of the Commencement on the Commencement Date  
2612 at the offices of Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, Wilmington,  
2613 Delaware 19801.

2614           **"Commencement"** has the meaning specified in Section 2.1.

2615           **"Commencement Conditions"** means GT USA Commencement Conditions and  
2616 the DSPC Commencement Conditions.

2617 "Commencement Date" has the meaning specified in Section 2.1.

2618 "Concession Fee" has the meaning specified in Section 4.3(c).

2619 "Concession Fee Differential" means the difference between the actual  
 2620 Concession Fee owed by GT USA in any calendar year less the Minimum Annual Concession  
 2621 Fee.

2622 "Contract Closure Environmental Activities" means any and all activities  
 2623 required to be taken pursuant to ARTICLE 17, and applicable Environmental Law in order to  
 2624 complete all Response Actions for GT USA Contamination in compliance with all applicable  
 2625 Environmental Law.

2626 "Day" means a calendar day unless otherwise specified.

2627 "DNREC" means the Department of Natural Resources and Environmental  
 2628 Control of the State of Delaware.

2629 "Dollars" means United States dollars.

2630 "DSPC" has the meaning specified in the Preamble.

2631 "DSPC Books and Records" has the meaning specified in Section 2.11(a).

2632 "DSPC Commencement Conditions" has the meaning specified in  
 2633 APPENDIX 2(b).

2634 "DSPC Default" has the meaning specified in Section 10.6.

2635 "DSPC Tariff" means DSPC Terminal Tariff Agreement issued February 17,  
 2636 2012, as amended from time to time.

2637 "DSPC's Objection Notice" has the meaning specified in Section 17.4(b).

2638 "Edgemoor" means those certain tracts of land commonly referred to as Tax  
 2639 Parcel No. 06-153.00-006 and Tax Parcel No. 06-153.00-003 and conveyed to DSPC pursuant to  
 2640 that certain Deed recorded in the Office of the Recorder of Deeds in and for New Castle County,  
 2641 Delaware as Instrument No. 20170227-0010347 on February 27, 2017.

2642 "Environmental Laws" means all Laws issued by any Governmental Authority,  
 2643 including, but not limited to, those so defined in or regulated under any of the following: 15 U.S.  
 2644 Code Section 2601, *et seq.* (the Toxic Substances Control Act); 33 U.S. Code Section 1251, *et*  
 2645 *seq.* (the Federal Water Pollution Control Act); 42 U.S. Code Section 6901, *et seq.* (the Resource  
 2646 Conservation and Recovery Act); 42 U.S. Code Section 7401, *et seq.* (the Clean Air Act); 42  
 2647 U.S. Code Section 9601, *et seq.* (the Comprehensive Environmental Response, Compensation  
 2648 and Liability Act); 49 U.S. Code Section 1801, *et seq.* (the Hazardous Materials Transportation  
 2649 Act); the Delaware Underground Storage Tank Act, 7 Del. C. § 7401 *et seq.*, the Delaware  
 2650 Hazardous Substance Cleanup Act, 7 Del. C. §§ 9101 *et seq.*, the Delaware Hazardous Waste



2651 Management Act, 7 Del. C. §§ 6302 *et seq.* and similar state and local laws and local fire codes,  
2652 the regulations adopted and promulgated pursuant to such statutes, including any regulations  
2653 adopted pursuant to such statutes after the Execution Date, as well as any subsequently enacted  
2654 federal, Delaware, local or maritime law, statute, ordinance, rule, regulation, program, plan,  
2655 resolution, policy, program, permit, order, or other directive issued by any Governmental  
2656 Authority as may be modified, amended or reissued, in any way relating to or regulating the  
2657 Permitted Operations with regard to:

2658 (i) human health, safety and industrial hygiene related to Toxic  
2659 Materials;

2660 (ii) the environment, including natural resources, pollution or  
2661 contamination of the air, soil, sediment, soil gas, surface water, groundwater, structures, and  
2662 subsurface structures including utility vaults, corridors or conduits, or noise or light pollution;

2663 (iii) toxic Materials, including, without limitation, the handling, use,  
2664 storage, accumulation, transportation, generation, spillage, migration, discharge, release,  
2665 treatment or disposal or any Toxic Materials, or Response Actions associated with same; or

2666 (iv) global warming or generation of greenhouse gases.

2667 “**Environmental Remediation**” means the investigation, testing, feasibility  
2668 study, risk assessment, treatment, removal, disposal, reuse, handling, transport, clean up,  
2669 remediation, containment, capping, encapsulating, mitigation, or monitoring of Hazardous  
2670 Materials.

2671 “**Equity Participant**” means, with respect to GT USA, any person or entity that  
2672 holds any partnership interest, membership interest, capital stock or other ownership interest in  
2673 GT USA.

2674 “**Escrow Agent**” means an escrow agent designated by GT USA and approved by  
2675 DSPC.

2676 “**Estimated Reinstatement Costs**” means GT USA’s estimate of the costs of  
2677 carrying out the Reinstatement Work.

2678 “**Execution Date**” has the meaning specified in the introduction to this  
2679 Agreement.

2680 “**Existing Conditions**” has the meaning specified in Section 16.2.

2681 “**Existing Port**” has the meaning specified in the Recitals.

2682 “**Expiration Date**” has the meaning specified in Section 2.2.

2683 “**Fees and Charges**” has the meaning specified in Section 4.7.

2684 “**FMC**” has the meaning specified in Section 1.2.

2685 "FMC Condition" has the meaning set forth in APPENDIX 2.

2686 "FMC Filing" has the meaning specified in Section 1.2(a).

2687 "Force Majeure Event" has the meaning specified in Section 8.1.

2688 "General Permit" means DNREC's existing General NPDES Permit for storm  
2689 water discharge and any subsequently issued General Permits.

2690 "Governmental Authority" means any court, federal, state, or local government,  
2691 department, commission, board, bureau, agency or other regulatory, administrative,  
2692 governmental or quasi-governmental authority.

2693 "GT Americas" means GT Americas Corp., a Delaware corporation, and wholly-  
2694 owned subsidiary of GT International Limited FZC, a limited company organized in the  
2695 Hamriyah Free Zone in the United Arab Emirates.

2696 "GT USA" has the meaning specified in the Preamble.

2697 "GT USA Commencement Conditions" has the meaning specified in  
2698 APPENDIX 2(a).

2699 "GT USA Contamination" means the Hazardous Materials Contamination on,  
2700 under, or migrating from the Premises that: (i) was caused, permitted or authorized by GT USA  
2701 or by any of its representatives after the Commencement Date; or (ii) was caused, permitted or  
2702 authorized on the Premises by any third party during the Term.

2703 "GT USA Contractors" mean all contractors, major suppliers, architects,  
2704 engineers, consultants, and all subcontractors and major suppliers thereto, and any others that  
2705 may perform work or services related to the proposed Leasehold Improvements.

2706 "GT USA Default" has the meaning specified in Section 10.1.

2707 "GT USA Responsible Persons" has the meaning specified in Section 15.1.

2708 "Gulfair" means Gulfair Company Limited, a United Arab Emirates  
2709 limited company, and GT International Limited FZC, a limited company organized in the  
2710 Hamriyah Free Zone in the United Arab Emirates.

2711 "Handback" has the meaning specified in Section 17.2(a).

2712 "Handback Date" has the meaning specified in Section 17.2(a).

2713 "Handback Engineer" has the meaning specified in Section 17.3(a).

2714 "Handback Engineer Selection Date" has the meaning specified in  
2715 Section 17.3(a).



2716 **"Handback Guaranty"** means a letter of credit covering one hundred percent  
2717 (100%) of the agreed upon Estimated Reinstatement Costs valid for a period of ninety (90) days  
2718 after the Handback Date (provided the letter of credit shall be renewed no later than ten (10) days  
2719 prior to its termination if the Reinstatement Work is not completed by the termination date, as  
2720 determined by DSPC's Handback Engineer or, if applicable, the Independent Engineer).

2721 **"Handback Plan"** has the meaning specified in Section 17.3(b).

2722 **"Hazardous Materials"** means any flammables, explosives, radioactive  
2723 materials, hazardous waste, petroleum products or other hydrocarbons, chemicals, toxic  
2724 substances or related materials, including all substances regulated under or defined as "hazardous  
2725 substances," "hazardous materials," "toxic substances" or "solid wastes" in the Comprehensive  
2726 Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec.  
2727 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801, et seq.; the  
2728 Resources Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et seq.; the Toxic Substance  
2729 Control Act, as amended, 15 U.S.C. Sec. 2601 et seq.; DSPC's Tariff; Delaware Code  
2730 Annotated, Title 7 or any other Environmental Law.

2731 **"Hazardous Materials Contamination"** means the presence, release or  
2732 threatened release of Hazardous Materials.

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2737 **"Independent Appraiser"** means an independent third party appraiser that is  
2738 nationally recognized in appraising such assets and that is mutually acceptable to GT USA and  
2739 DSPC.

2740 **"Independent Engineer"** means an independent third party engineer that is  
2741 nationally recognized in such engineering work and that is mutually acceptable to GT USA and  
2742 DSPC.

2743 **"Index"** means the Consumer Price Index for "All Items" shown on the Average  
2744 for "Urban Wage Earners and Clerical Workers" as promulgated by the Bureau of Labor  
2745 Statistics of the U.S. Department of Labor for the metropolitan region of Philadelphia,  
2746 Pennsylvania, Camden, New Jersey, and Wilmington, Delaware using the year 1982 - 1984 as a  
2747 base of 100 (Series ID: CWURS12BSA0). In the event that a substantial change is made in the  
2748 method by which such Consumer Price Index is determined, then for purposes of this paragraph,  
2749 the Index shall be adjusted to the figure that would have resulted had no change occurred in the  
2750 manner of determining the Consumer Price Index. In the event that such Consumer Price Index  
2751 (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan  
2752 publication evaluating the information theretofore used in determining the Consumer Price Index  
2753 shall be used in lieu of the Consumer Price Index.

2754 **"Industry Standard Costs"** means the average cost, based on two (2) estimates  
2755 from reputable, insured Environmental Remediation contractors licensed in the Delaware,

2756 Pennsylvania or New Jersey area for similar work at a similarly situated but non-environmentally  
2757 impaired location. DSPC and GT USA shall each select one of the contractors to provide an  
2758 estimate; provided, further, that neither party shall obtain an estimate from any environmental  
2759 consultant or contractor currently under contract with such party.

2760 "Initial Capital Expenditure Obligation" has the meaning specified in  
2761 Section 4.9(c).

2762 "Initial Inspection Report" has the meaning specified in Section 17.3(b).

2763 "Initial Payment" has the meaning specified in Section 4.1.

2764 "Initial Warehouse Capital Expenditure" has the meaning specified in  
2765 Section 4.9(d).

2766 "Insolvency" or "Insolvent" means, with respect to any person, any of the  
2767 following on the part of such person: (i) an assignment for the benefit of creditors; (ii) the filing  
2768 of a voluntary petition in bankruptcy; (iii) an adjudication by a court of competent jurisdiction  
2769 that such person is bankrupt; (iv) the appointment of a receiver for the properties of such person;  
2770 (v) the filing of an involuntary petition of bankruptcy and failure of to secure a dismissal of the  
2771 petition within ninety (90) days after the filing; or (vi) the attachment of or the execution on such  
2772 person's leasehold interest hereunder as a result of any lien, encumbrance or judgment created,  
2773 incurred or suffered by any such person and such attachment or execution has not been secured,  
2774 removed, vacated, discharged, stayed by court, bonding or otherwise, within sixty (60) days.

2775 "Law" means any order, writ, injunction, decree, judgment, law, ordinance,  
2776 decision, principle of common law, ruling that has the force of law, statute, code, rule or  
2777 regulation of any Governmental Authority.

2778 "Leasehold Estate" has the meaning specified in Section 18.4(d).

2779 "Leasehold Improvements" means all permanent buildings, structures, major  
2780 alterations or capital improvements, including the installation, construction, extension, erection,  
2781 or major repair of any fixtures, buildings or structure on the Premises (other than the Assets), and  
2782 all substitutions or replacements thereof or to existing improvements on the Premises, both  
2783 interior and exterior, structural and non-structural, in each case made by GT USA.

2784 "Leasehold Mortgagee" has the meaning specified in Section 18.2.

2785 "Letter of Credit" has the meaning specified in ARTICLE 14.

2786 "Loss" means, with respect to any person, any loss, liability, damage, penalty,  
2787 charge or out-of-pocket and documented cost or expense actually suffered or incurred by such  
2788 person (including reasonable attorneys' fees). Loss shall exclude punitive damages.

2789 "Material Adverse Impact" means any event, change, circumstance, effect or  
2790 other matter that has, or could reasonably be expected to have, either individually or in the  
2791 aggregate with all other events, changes, circumstances, effects or other matters, with or without



2792 notice, lapse of time or both, a material adverse effect on (a) the business, assets, liabilities,  
2793 properties, condition (financial or otherwise), operating results, operations or prospects of the  
2794 Premises, or (b) the ability of DSPC or GT USA to perform its obligations under this Agreement.

2795 **"Material Damage or Destruction"** means a material casualty loss, destruction  
2796 or damage to any part of the Premises or Original Assets (other than wear and tear, Toxic  
2797 Materials and other matters relating to the environment) that did not exist as of the date of the  
2798 pre-occupancy inspection described in Section 2.3(d), has not been substantially repaired in a  
2799 good and workmanlike manner before the Commencement Date, and will adversely affect the  
2800 Permitted Operations taken as a whole; provided, however, that no effect arising out of or in  
2801 connection with, or resulting from, any of the following shall be deemed, either alone or in  
2802 combination, to constitute or contribute to a Material Damage or Destruction: (a) any condition  
2803 in, on or under the Premises that GT USA has actual knowledge as of the date of the Pre-  
2804 Occupancy Report; or (b) any loss, destruction, or damage caused by the negligence, intentional  
2805 misconduct or bad faith of GT USA or its representatives.

2806 **"Minimum Annual Concession Fee"** has the meaning specified in Section 4.4.

2807 **"Minimum Annual Volume Guarantee"** has the meaning specified in  
2808 Section 4.5(a).

2809 **"Minimum Condition"** means the condition necessary to substantially satisfy the  
2810 Basic Condition and have the operational capacity to handle (i) the same types of services that  
2811 have been provided upon the Premises for the prior five (5) years from the date of termination,  
2812 (ii) a TEU and short ton volume equal to or greater than GT USA's average annual TEU and  
2813 short ton volume over the similar prior five (5) years but in no event less than the Minimum  
2814 Annual Volume Guarantee then in effect and (iii) be in a reasonably similar environmental  
2815 condition existing as of the Commencement Date. The Minimum Condition shall further mean  
2816 the continued employment of operational and administrative level support personnel to manage  
2817 the then current operations at the Port.

2818 **"Minimum Volume"** has the meaning specified in Section 4.5(a).

2819 **"Minimum Warehouse Capital Obligation"** has the meaning specified in  
2820 Section 4.9(d).

2821 **"MLW"** means mean low water.

2822 **"Mortgage"** has the meaning specified in Section 18.2.

2823 **"Mutual Environmental Review"** has the meaning specified in Section 16.2.

2824 **"NFPA"** means the National Fire Protection Association.

2825 **"NPDES"** means the National Pollution Discharge Elimination System.

2826 **"Non-Curable Default"** has the meaning specified in Section 18.4(d).

2827           **"Non-Development Related Existing Conditions"** shall mean Existing  
 2828 Conditions which require a response, whether investigation, testing, feasibility study, risk  
 2829 assessment, treatment, removal, disposal, reuse, handling, transport, clean up, remediation,  
 2830 containment, capping, encapsulating, mitigation, or monitoring that were not triggered by,  
 2831 arising out of or exacerbated by any actions of GT USA or its employees, agents or contractors  
 2832 in connection with the possession, operation and development of the Premises.

2833           **"O&M Dredging"** means ongoing maintenance and operation dredging.

2834           **"Offsetable Amounts"** has the meaning specified in Section 4.7(b).

2835           **"OpCo"** has the meaning specified in Section 5.4(a).

2836           **"Operating Revenues"** has the meaning specified in Section 2.5.

2837           **"Original Assets"** has the meaning specified in Section 2.7.

2838           **"Outside Construction Date"** has the meaning specified in Section 4.9(b).

2839           **"Partial Taking Event"** has the meaning specified in Section 12.1(b).

2840           **"Party"** or **"Parties"** has the meaning specified in the Preamble.

2841           **"Party-Appointed Appraiser"** has the meaning specified in Section 17.9(c)(ii).

2842           **"Permitted Liens"** means those matters set forth in APPENDIX 11.

2843           **"Permitted Operations"** has the meaning specified in Section 3.1.

2844           **"person"** means any natural person, corporation, limited liability company,  
 2845 general partnership, limited partnership, proprietorship, other business organization, trust, union,  
 2846 association or Governmental Authority.

2847           **"Pigeon Point Option"** has the meaning specified in Section 2.6(a).

2848           **"Pigeon Point Property"** means the real property described in APPENDIX 5.

2849           **"Port"** has the meaning specified in the Recitals.

2850           **"Pre-Occupancy Report"** means the written report prepared or caused to be  
 2851 prepared by GT USA based upon the results of the pre-occupancy inspection and subject to the  
 2852 approval of DSPC, which shall not be unreasonably withheld.

2853           **"Premises"** has the meaning specified in Section 2.2.

2854           **"Prime Rate"** means the prime rate of interest as reported in *The Wall Street*  
 2855 *Journal*.



2856           **"Project Dredge"** means the initial dredging required for the conversion of  
2857 Edgemoor to an operational and fully-functional container handling terminal.

2858           **"Reasonable Prudent Operator"** means a person seeking in good faith to  
2859 perform its contractual obligations and, in so doing and in the general conduct of its undertaking,  
2860 exercising that degree of skill, diligence, prudence and foresight which would reasonably and  
2861 ordinarily be expected from a skilled and experienced operator engaged in the same type of  
2862 undertaking under the same or similar circumstances and conditions.

2863           **"Reinstatement Costs"** has the meaning specified in Section 17.4(c).

2864           **"Reinstatement Plan"** has the meaning specified in Section 17.4(a).

2865           **"Reinstatement Schedule"** has the meaning specified in Section 17.4(a)(ii).

2866           **"Reinstatement Work"** has the meaning specified in Section 17.3(b).

2867           **"Release"** means any release, spill, discharge, disposal, leak, leaching, migration  
2868 or dispersal of Hazardous Materials.

2869           **"Response Action"** means the investigation, testing, feasibility study, risk  
2870 assessment, treatment, removal, disposal, reuse, handling, transport, clean up, remediation,  
2871 containment, capping, encapsulating, mitigation, or monitoring of Hazardous Materials or any  
2872 Release; the preparation and implementation of any health and safety plans, operations and  
2873 maintenance plans or any other plans related to a Release; the demolition, reconstruction or  
2874 construction of any subsurface or surface structures to implement the Response Action; and the  
2875 Restoration of the Premises after the completion of the Response Action whether required by  
2876 Environmental Law or this Agreement.

2877           **"Restoration," "Restoring" or "Restore"** has the meaning specified in  
2878 Section 7.1.

2879           **"Riveredge"** means the property located just to the south of the Delaware  
2880 Memorial Bridge on the Delaware River commonly referred to as Tax Parcel No. 21-022.00-002  
2881 and currently owned by Parkway Gravel, Inc.

2882           **"Settlement Statement"** means the statement agreed to by GT USA and DSPC  
2883 reflecting all payments and transfer of funds at the Closing issued by Morris, Nichols, Arsht &  
2884 Tunnell LLP, through its trust account.

2885           **"Shipping Act"** has the meaning specified in Section 1.2.

2886           **"Standard of Care"** has the meaning specified in Section 3.2.

2887           **"State"** means and includes, in its broadest sense, the State of Delaware, all of its  
2888 officials, officers, directors, executives, administrators, agents, members and employees.

2889           **"Supplemental CapEx"** has the meaning specified in Section 2.3(e).

2890 "Taking Event" has the meaning specified in Section 12.1(a).

2891 "Taking Restoration Funds" has the meaning specified in Section 12.1(b).

2892 "Target Closing Date" has the meaning specified in Section 2.1.

2893 "Term" has the meaning specified in Section 2.2.

2894 "Termination Date" has the meaning specified in Section 2.2.

2895 "TEU" means the measurement standards customarily employed by United States  
2896 ports for computing intermodal container traffic in 20-foot equivalent units, with 40-foot  
2897 containers counted as two (2) TEU, or the pro rata equivalents thereof.

2898 "Total Capital Expenditure Obligation" has the meaning specified in  
2899 Section 4.9(a).

2900 "Toxic Materials" means: (a) substances that are toxic, corrosive, inflammable or  
2901 reactive; (b) petroleum products, crude oil (or any fraction thereof) and their derivatives; (c)  
2902 explosives, asbestos, radioactive materials, hazardous wastes, sewage, infectious substances,  
2903 toxic substances or related hazardous materials; (d) air pollutants, noxious fumes, vapors, soot,  
2904 smoke or other airborne contaminants; and (e) substances which now or in the future are defined  
2905 by Environmental Laws as "hazardous substances," "hazardous materials," "hazardous wastes,"  
2906 "pollutants," "contaminants," "reproductive toxins," "carcinogens" or "toxic substances," or  
2907 regulated under applicable Environmental Laws.

2908 "Transaction Documents" has the meaning specified in APPENDIX 2(g)(ii).

2909 "USDA" means the United States Department of Agriculture.

2910 "USEPA" means the United States Environmental Protection Agency.

2911 "VCP Agreement" has the meaning specified in Section 16.8.

2912 "Volume Schedule" has the meaning specified in Section 4.5(a).

2913 "Wilmington South Disposal Area" means the real property known as the  
2914 Wilmington Harbor South Property or the Wilmington Harbor South Dredge Material Disposal  
2915 Site described in APPENDIX 6.

2916 **Section 22.2 Terms Generally**

2917 Words in the singular shall include the plural and vice versa, in each case, as the context  
2918 requires, (b) the term "hereof," "herein," and "herewith" and words of similar import shall,  
2919 unless otherwise stated, be construed to refer to this Agreement and not to any particular  
2920 provision of this Agreement, and Article, Section, paragraph and Appendix references are to the  
2921 Articles, Sections, paragraphs and Appendices to this Agreement unless otherwise specified and



2922 (c) the word "including" and words of similar import when used in this Agreement shall mean  
2923 "including, without limitation," unless otherwise specified.

2924 [Signature Pages Follow]

2925

IN WITNESS WHEREOF, DSPC and GT USA have caused this Agreement to be executed as of the day and year first above written.

**DIAMOND STATE PORT CORPORATION**

**Witness:**

By: Jeffrey W. Bullock (SEAL)  
Chairperson

2929 STATE OF DELAWARE )  
2930 ) ss.  
2931 COUNTY OF NEW CASTLE )

2932 I HEREBY CERTIFY that on this 18<sup>th</sup> day of September, 2018,  
2933 before me, a Notary Public in and for the State and County aforesaid, personally appeared  
2934 Jeffrey W. Bullock, Chairperson of the Diamond State Port Corporation, known to me (or  
2935 satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed  
2936 instrument and acknowledged that said individual executed the same on behalf of Diamond State  
2937 Port Corporation for the purposes therein contained.

2938 IN WITNESS WHEREOF, I hereunto set my hand and official seal.

2939 \_\_\_\_\_ Kathleen A. Bell  
2940 Notary Public

**KATHERINE H. BETTERLY**  
**NOTARY PUBLIC**  
**STATE OF DELAWARE**  
 My Commission Expires July 28, 2021

2941 My Commission Expires: \_\_\_\_\_ [Notary Seal]

2942





Witness:

Daniel P. Moore  
Donald P. Moore

GT USA WILMINGTON, LLC

By: [Signature] (SEAL)  
Peter Richards  
President & Director

2943 STATE OF DELAWARE )  
2944 ) ss.  
2945 COUNTY OF NEW CASTLE )

2946 I HEREBY CERTIFY that on this 18th day of September, 2018,  
2947 before me, a Notary Public in and for the State and County aforesaid, personally appeared Peter  
2948 Richards, President & Director of GT USA Wilmington, LLC known to me (or satisfactorily  
2949 proven) to be the person whose name is subscribed to the foregoing and annexed instrument and  
2950 acknowledged that said individual executed the same on behalf of GT USA Wilmington, LLC  
2951 for the purposes therein contained.

2952 IN WITNESS WHEREOF, I hereunto set my hand and official seal.

2953 [Signature]  
2954 Notary Public

KATHERINE H. BETTERLY  
NOTARY PUBLIC  
STATE OF DELAWARE  
My Commission Expires July 28, 2021

2955 My Commission Expires: \_\_\_\_\_ [Notary Seal]

2956



FOR PURPOSES OF SECTIONS 3.3, 3.6,  
5.4(b), 14.1, 19.2(b) and 21.4

GT AMERICAS CORP.

Witness:

Donald P. Moore  
Donald P. Moore

By: [Signature] (SEAL)  
Peter Richards  
Chief Executive Officer

2957 STATE OF DELAWARE )  
2958 ) ss.  
2959 COUNTY OF NEW CASTLE )

2960 I HEREBY CERTIFY that on this 18<sup>th</sup> day of September, 2018,  
2961 before me, a Notary Public in and for the State and County aforesaid, personally appeared Peter  
2962 Richards, Chief Executive Officer of GT Americas Corp. known to me (or satisfactorily proven)  
2963 to be the person whose name is subscribed to the foregoing and annexed instrument and  
2964 acknowledged that said individual executed the same on behalf of GT Americas Corp. for the  
2965 purposes therein contained.

2966 IN WITNESS WHEREOF, I hereunto set my hand and official seal.

2967 [Signature]  
2968 Notary Public

KATHERINE H. BETTERLY  
NOTARY PUBLIC  
STATE OF DELAWARE  
My Commission Expires July 28, 2021

2969 My Commission Expires: \_\_\_\_\_

2970 12062112.11

[Notary Seal]





2971

APPENDIX 1

2972

PREMISES

2973

**Existing Port:**

2974

2975

2976

Correctional and Confirmatory Deed recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware as Instrument No. 20020726-0072228 on July 26, 2002 but excluding the Wilmington South Disposal Area and the Pigeon Point Property.

2977

**Edgemoor:**

2978

2979

Deed recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware as Instrument No. 20170227-0010347 on February 27, 2017.

2980

2981

The Premises are also depicted in a drawing attached as APPENDIX 10.

2982

2983 **APPENDIX 2**

2984 **CONDITIONS TO COMMENCEMENT**

2985 (a) **GT USA Commencement Conditions.** GT USA's obligation to proceed with  
2986 Commencement is conditioned entirely upon the occurrence of each and all of the following  
2987 conditions and events, each of which may be waived by GT USA as the case may be, in its sole  
2988 discretion but excluding such condition or event if the failure to satisfy it is due to the fault of  
2989 GT USA (collectively, the "GT USA Commencement Conditions");

2990 (i) The FMC Filing shall have occurred (the "FMC Condition").

2991 (ii) Receipt of CFIUS Approval.

2992 (iii) Receipt of all required consents and assignment of all transferable permits  
2993 required for operation of the Existing Port and Edgemoor.

2994 (iv) Receipt of all third-party consents listed on APPENDIX 12.

2995 (v) GT USA shall have completed its due diligence on all environmental  
2996 matters relating to the Premises, including the Existing Conditions, and shall be satisfied, in its  
2997 reasonable discretion with such due diligence, that there are no facts or circumstances related to  
2998 environmental matters that would materially affect its ability to perform its obligations under this  
2999 Agreement; provided, however, that this condition precedent shall be automatically deemed  
3000 waived by GT USA if it is not satisfied by September 18, 2018.

3001 (vi) All representations and warranties of DSPC herein shall be true and  
3002 correct in all material respects on and as of the Execution Date, on and as of the Commencement  
3003 Date.

3004 (vii) DSPC shall not be in breach in any material respect of any covenant on its  
3005 part contained in this Agreement that is to be performed or complied with by DSPC as of the  
3006 Execution Date, as of the Commencement Date.

3007 (viii) GT USA shall have obtained title insurance with standard industry  
3008 exceptions with respect to the Premises and DSPC's ownership thereof and exceptions for the  
3009 leasehold mortgages encumbering Tax Parcel No. 10-006.00-018 identified on APPENDIX 11  
3010 hereto and any other recorded leasehold mortgages granted by any tenants at the Existing Port  
3011 that could not reasonably be expected to materially and adversely affect the ability of GT USA to  
3012 obtain financing as contemplated by ARTICLE 18.

3013 (ix) The Beazley Insurance Policy shall be in full force at the Commencement  
3014 Date.

3015 (b) **DSPC Commencement Conditions.** DSPC's obligation to proceed with  
3016 Commencement is conditioned entirely upon the occurrence of each and all of the following  
3017 conditions and events, each of which may be waived by DSPC as the case may be, in its sole



3018 discretion but excluding such condition or event if the failure to satisfy it is due to the fault of  
3019 DSPC (collectively, the "DSPC Commencement Conditions");

3020 (i) Satisfaction of the FMC Condition.

3021 (ii) Receipt of CFIUS Approval.

3022 (iii) Receipt of all required consents and assignment of all transferable permits  
3023 required for operation of the Existing Port and Edgemoor.

3024 (iv) GT USA shall have caused a joint pre-occupancy inspection of the  
3025 Premises to be conducted and GT USA shall cause the Pre-Occupancy Report to be prepared.

3026 (v) All representations and warranties of GT USA herein shall be true and  
3027 correct in all material respects on and as of the Execution Date, on and as of the Commencement  
3028 Date.

3029 (vi) GT USA shall have entered into contracts with the International  
3030 Longshoreman's Association – Local 1694-1 and the International Brotherhood of Teamsters –  
3031 Local 326 effective as of the Commencement Date.

3032 (vii) GT USA shall have delivered and DSPC reviewed and signed-off on  
3033 financials (audited, if available) of GT USA and GT Americas.

3034 (viii) Receipt of all third-party consents listed on APPENDIX 12.

3035 (ix) Consent by the City of Wilmington or satisfaction of the City of  
3036 Wilmington mortgages presently encumbering the Existing Port.

3037 (x) Consent by the Delaware River and Bay Authority or repayment and  
3038 termination of that certain Lease between DSPC and the Delaware River and Bay Authority  
3039 dated as of March 1, 2005 (Warehouse H) and Operating Agreement between the Delaware  
3040 River and Bay Authority and DSPC dated March 1, 2005 (Warehouse H).

3041 (xi) GT USA shall not be in breach in any material respect of any covenant on  
3042 its part contained in this Agreement that is to be performed or complied with by DSPC as of the  
3043 Commencement Date.

3044 (c) **Agreement Grant; Joint Final Inspection; Delivery of Premises.** One (1)  
3045 calendar day prior to the Commencement Date, GT USA and DSPC shall perform a joint on-site  
3046 final inspection of the Premises, and provided that there shall not have been a Material Damage  
3047 or Destruction, GT USA shall accept in writing the Premises in its then As-Is, Where-Is  
3048 condition subject to the terms of this Agreement; provided, that if Material Damage or  
3049 Destruction has not been repaired in a good and workmanlike manner before the Commencement  
3050 Date, then that shall constitute failure to deliver the Premises, which shall be subject to  
3051 APPENDIX 2(f)(B) below.

3052 (d) **Closing Deliverables.** At Closing, the parties shall deliver the following:

3053 (i) At Closing, GT USA shall deliver to DSPC  
 3054 (A) The Initial Payment;  
 3055 (B) The Letter of Credit;  
 3056 (C) Proof of insurance as required by Article 13;  
 3057 (D) Pre-Occupancy Report;  
 3058 (E) A copy of GT USA safety and emergency management plans, a  
 3059 point of contact for safety and security matters and the name and telephone number of each  
 3060 representative of GT USA to be contacted in case of an emergency;  
 3061 (F) A disaster preparedness plan in form and substance acceptable to  
 3062 DSPC;  
 3063 (G) Side letter, in a form reasonably acceptable to DSPC, signed by  
 3064 Gulfainer Company Limited and GT International Limited FZC confirming their agreement to  
 3065 comply with certain terms of this Agreement;  
 3066 (H) GT USA's Legal Opinion, substantially in the form of APPENDIX  
 3067 2-5, attached hereto and incorporated herein by reference;  
 3068 (I) Settlement Statement executed by GT USA; and  
 3069 (J) Assignment and Assumption Agreement in substantially the form  
 3070 attached hereto executed by GT USA.  
 3071 (ii) At Closing, DSPC shall deliver to GT USA:  
 3072 (A) DSPC's Legal Opinion, substantially in the form of APPENDIX 2-  
 3073 1, attached hereto and incorporated herein by reference;  
 3074 (B) Assignment and Assumption Agreement in substantially the form  
 3075 attached hereto executed by DSPC;  
 3076 (C) Settlement Statement executed by DSPC; and  
 3077 (D) Bill of Sale, in the form attached hereto as APPENDIX 2-2, signed  
 3078 by DSPC.  
 3079 (e) **Governmental Intervention.** If any Governmental Authority of competent  
 3080 jurisdiction shall have undertaken any action permanently restraining, enjoining or otherwise  
 3081 prohibiting the transactions contemplated by this Agreement, and such action has become final  
 3082 and non-appealable prior to the Commencement Date, then either party may terminate this  
 3083 Agreement by providing written notice of termination to the other party, and the parties shall  
 3084 have no continuing rights or obligations with respect to this Agreement.



(f) **Material Damage or Destruction.** In the event a Material Damage or Destruction exists as of the Commencement Date, then GT USA shall have the option to Restore or repair, as applicable, the affected portion of the Premises and seek reimbursement from insurance proceeds received by DSPC, all in accordance with the terms of this subsection (f) and the other terms of this Agreement and applicable Law or to terminate this Agreement by providing DSPC with written notice of termination and, in the event of such termination, the Parties shall have no continuing rights or obligation with respect to this Agreement other than those that survive termination. If GT USA exercises its option to Restore or repair, as applicable, the affected portion of the Premises, then (A) DSPC shall assign to GT USA all insurance proceeds payable by third-party insurers to DSPC with respect to such Material Damage or Destruction and, to the extent permissible by law, assign any right to sue it may have against any third party for such Material Damage or Destruction, or enforce, at no cost to GT USA, all of its rights, remedies and privileges under any applicable insurance policies with third-party insurers, and (B) GT USA shall diligently proceed to Restore or repair, as applicable, the affected portion of the Premises.

(g) **Agreement Transition Procedures.** Prior to the Commencement Date, the Parties shall cooperate with each other to ensure the orderly transition of the Premises and the Original Assets on the Commencement Date. To that end, DSPC shall make reasonable efforts to set up transition meetings among DSPC, GT USA, and the existing users of the Premises, and shall grant GT USA pre-Commencement Date access to the Premises and the Original Assets so that GT USA can facilitate its transition of the Permitted Operations as of the Commencement Date.

(h) **Representations and Warranties of GT USA.** GT USA makes the following representations and warranties to DSPC, and GT USA acknowledges that DSPC is relying upon such representations and warranties in entering into this Agreement:

(i) **Organization.** As of the Execution Date and the Commencement Date, GT USA is, and will continue to be during the Term, duly organized, validly existing and in good standing under Delaware law and is duly qualified to conduct business in the State of Delaware;

(ii) **Power and Authority.** As of the Execution Date and the Commencement Date, GT USA has the power and authority to execute and deliver this Agreement and all other documents as are required hereunder (the "Transaction Documents") and to perform its obligations thereunder;

(iii) **Enforceability.** Each of the Transaction Documents has been duly authorized, executed and delivered by GT USA and, assuming due execution and delivery by DSPC, constitutes a valid and legally binding obligation of GT USA, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity;

(iv) **No Conflicts.** The execution and delivery of the Transaction Documents by GT USA, the consummation of the transactions contemplated thereby, and the performance



by GT USA of the terms, conditions and provisions thereof have not and will not, as of the Execution Date and the Commencement Date, contravene or violate or result in a material breach of (with or without the giving of notice or lapse of time, or both) or cause the acceleration of any material obligations of GT USA under (i) any applicable Law, (ii) any material agreement, instrument or document to which GT USA is a party or by which it is bound, or (iii) the articles, bylaws or governing documents of GT USA;

(v) Consents; Authorizations. No consent or authorization is required to be obtained by GT USA from, and no notice or filing is required to be given by GT USA to or made by GT USA with, any person (including, without limitation, any Governmental Authority) in connection with the execution and delivery by GT USA of the Transaction Documents or the consummation of the transactions contemplated hereby, except for such consents that have been obtained and notices of filings that have been given as of the Execution Date or such other consents that are not required to be obtained as of the Execution Date and shall be obtained following the Execution Date;

(vi) Compliance with Law; Litigation. As of the Execution Date and the Commencement Date, GT USA is in compliance with all material Laws applicable to it other than related to permits for bulk handling at the Existing Port (the "Bulk Handling Permits") and GT USA has received no notice of non-compliance with any Law and does not know of or have reasonable grounds to know of any acts, matters or things which would, or may, give rise to a notice of non-compliance with any Law being issued concerning any GT USA operations, proposed activities or businesses conducted or to be conducted on the Premises. In addition, as of the Execution Date and the Commencement Date, GT USA and its Affiliates have at no time been prosecuted to conviction for an offense of non-compliance with any Environmental Laws or other Law relevant to the Premises or GT USA operations conducted, or to be conducted, thereat, nor settled any such prosecution short of conviction. As of the Execution Date and the Commencement Date, GT USA and its Affiliates are not listed on any of the following lists maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, the Bureau of Industry and Security of the United States Department of Commerce or their successors; the Specially Designated Nationals List; the Denied Persons List; the Unverified List; the Entity List; the Debarred List; or any other list of persons with which DSPC may not do business under applicable Law. As of the Execution Date and the Commencement Date, there is no action pending, at law or in equity, or before or by any Governmental Authority that has been properly served on GT USA or its Affiliates, nor to the best of GT USA's knowledge, threatened against GT USA that would have a material adverse effect on (i) the transactions contemplated by this Agreement, (ii) the validity or enforceability of this Agreement, or (iii) GT USA's ability to operate the Premises;

(vii) Opportunity to Inspect. GT USA acknowledges and agrees that it has been afforded all reasonable opportunity to inspect the Premises and all documentation provided by or on behalf of DSPC in respect thereof;

(viii) No Brokers; No Contingent Fee Agreements.

(A) Except for Seabury Securities LLC, whose fees will be paid solely by DSPC or its Affiliates, there is no investment banker, broker, finder or other intermediary



which has been retained by, or is authorized to act on behalf of GT USA, DSPC or their Affiliates who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement;

(B) GT USA attests that no person has been employed or retained to solicit or obtain DSPC's selection of GT USA or otherwise in connection with the transactions contemplated by this Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. As used herein, (A) "bona fide agency" means an established commercial or selling agency, maintained by GT USA for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or to obtain contracts with DSPC nor holds itself out as being able to obtain any contract or contracts with DSPC through improper influence, (B) "bona fide employee" means a person, employed by GT USA and subject to GT USA's supervision and control as to time, place and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or to obtain contracts with DSPC nor holds itself out as being able to obtain any contract or contracts with DSPC through improper influence, (C) "contingent fee" means commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a contract with DSPC, and (D) "improper influence" means any influence that induces or tends to induce an employee or officer of DSPC to give consideration or to act regarding a contract with DSPC on any basis other than the merits of the matter; and

(ix) Foreign Corrupt Practices Act. As of the Execution Date and the Commencement Date: (i) neither a Governmental Authority nor any other person has notified GT USA or its Affiliates in writing of any actual or alleged violation or breach of the Foreign Corrupt Practices Act; (ii) GT USA and its Affiliates have not undergone or is undergoing any audit, review, inspection, investigation, survey or examination of records relating to compliance with the Foreign Corrupt Practices Act, nor is there any basis for any such audit, review, inspection, investigation, survey or examination of records; (iii) GT USA and its Affiliates have not been and is not now under any administrative, civil or criminal investigation or indictment and is not party to any litigation involving alleged false statements, false claims or other improprieties relating to compliance by GT USA or its Affiliates with the Foreign Corrupt Practices Act, nor is there any basis for such investigation or indictment; and (iv) there are no situations with respect to the business of GT USA and its Affiliates that involved or involves (A) the use of any corporate funds or unlawful contributions, gifts, entertainment or other unlawful expenses related to political activity, (B) the making of any direct or indirect unlawful payments to government officials or others from corporate funds or the establishment or maintenance of any unlawful or unrecorded funds, (C) the violation of any of the provisions of the Foreign Corrupt Practices Act (or any rules or regulations promulgated thereunder), or (D) the receipt of any illegal discounts or rebates or any other violation of the antitrust laws; and

(x) DSPC and GT USA agree that all prior or contemporaneous oral and written representations, warranties and other agreements between and among themselves and their agents or representatives relative to the transactions contemplated herein are superseded by this Agreement.

(xi) For the sake of clarity, GT USA makes no representation that the approval of this Agreement by the Delaware Assembly has complied with all requirements of the laws of the State of Delaware, such matter being solely the representation of DSPC below.

(i) **Representations and Warranties of DSPC.** DSPC makes the following representations and warranties to GT USA, and DSPC acknowledges that GT USA is relying upon such representations and warranties in entering into this Agreement:

(i) Established. As of the Execution Date and the Commencement Date, DSPC is, and will be, validly established and existing under Subchapter II of Chapter 87, Title 29 of the Delaware Code;

(ii) Power and Authority. As of the Execution Date and the Commencement Date, DSPC has, and will continue to have during the Term, the power and authority to execute and deliver the Transaction Documents and to perform its obligations thereunder;

(iii) Enforceability. Each of the Transaction Documents has been duly authorized, executed and delivered by DSPC, and, assuming the due execution and delivery by GT USA, constitutes a valid and legally binding obligation of DSPC, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity;

(iv) Compliance with Laws. As of the Commencement Date, (i) except as set forth on APPENDIX 4, DSPC is in compliance with all material Laws applicable to it and DSPC has received no notice of non-compliance with any Law and does not know of or have reasonable grounds to know of any acts, matters or things which would, or may, give rise to a notice of non-compliance with any Law being issued concerning any DSPC's current operations on Premises; and (ii) the approval of this Agreement on behalf of DSPC has complied with all requirements of the laws of the State of Delaware.

(v) Consents; Authorizations. No consent or authorization is required to be obtained by DSPC from, and no notice or filing is required to be given by DSPC to or made by DSPC with, any third party (including, without limitation, any Governmental Authority) in connection with the execution and delivery by DSPC of the Transaction Documents or the consummation of the transactions contemplated thereby, except for those consents set forth on APPENDIX 12, which approval has been obtained or will be obtained no later than the Commencement Date;

(vi) No Conflict. The execution and delivery of the Transaction Documents by DSPC, the consummation of the transactions contemplated thereby, and the performance by DSPC of the terms, conditions and provisions thereof have not, as of the Execution Date and the Commencement Date and will not during the Term, contravene or violate or result in a material breach of (with or without the giving of notice, lapse of time or both) or acceleration of any material obligations of DSPC under (A) DSPC's statutory authority and certificate of incorporation and bylaws of DSPC, (B) any material agreement, instrument or other document to



3248 which DSPC is a party or by which it is bound, or (C) any judgment, decree, order, statute,  
3249 injunction, rule, regulation or the like applicable to DSPC or its assets;

3250 (vii) Litigation. Except as set forth on APPENDIX 18, there is no action  
3251 pending at law or in equity, or before or by any Governmental Authority that has been properly  
3252 served on DSPC, nor, to DSPC's reasonable knowledge, threatened or likely against DSPC that  
3253 arises from Environmental Law or that would have a material adverse effect on (i) the  
3254 transactions contemplated by the Transaction Documents, or (ii) the validity or enforceability of  
3255 this Agreement.

3256 (viii) Premises and Original Assets Ownership. As of the Commencement Date  
3257 and immediately prior to Commencement, DSPC is the sole owner of all right, title and interest  
3258 in the Premises and the Original Assets, free of any liens, mortgage or other encumbrances, other  
3259 than the Permitted Liens.

3260  
3261

3262 APPENDIX 2-1

3263 GT USA OPINION OF COUNSEL

3264  
3265 [Letterhead of Counsel to GT USA]

3266 \_\_\_\_\_, 2018

3267 Diamond State Port Corporation  
3268 1 Hausel Road  
3269 Wilmington, DE 19801-5882

3270 Ladies & Gentlemen:

3271 We are counsel to GT USA Wilmington, LLC, a Delaware limited liability company  
3272 ("GT USA"), in connection with the concession and lease by and between Diamond State Port  
3273 Corporation, a Delaware corporation created in the Department of State of the State of Delaware  
3274 ("DSPC"), and GT USA, dated as of \_\_\_\_\_, 2018, (the "Agreement") relating to  
3275 the operation and further development of the Port of Wilmington's situation on land identified as  
3276 the Premises identified in this Agreement. This opinion is being delivered to you pursuant to  
3277 APPENDIX 2(a)(vii) of this Agreement. Capitalized terms used and not otherwise defined  
3278 herein shall have the respective meanings set forth in this Agreement.

3279 In our capacity as such counsel, we have examined originals, or copies certified or  
3280 otherwise identified to our satisfaction as being true copies of the originals, of (i) this Agreement  
3281 and (ii) such corporate and other records and documents we considered appropriate as the basis  
3282 for the opinions set forth below.

3283 For purposes of this opinion, we have assumed the genuineness of all signatures, the  
3284 authenticity of all documents submitted to us as originals and the conformity to the originals of  
3285 all documents submitted to us as copies.

3286 On the basis of such examination and subject to the qualifications and limitations in this  
3287 opinion, we are of the opinion that:

3288 1. GT USA is a limited liability company duly formed and validly existing in good  
3289 standing under the laws of Delaware, with power to enter into the Agreement, and to perform its  
3290 obligations under the Agreement.

3291 2. The execution, delivery, and performance of the Agreement have been duly  
3292 authorized by all necessary corporate action on the part of GT USA, and the Agreement has been  
3293 duly executed and delivered by GT USA.

3294 3. The Agreement constitutes the legally valid and binding obligation of GT USA,  
3295 enforceable against GT USA in accordance with its terms, except as may be limited by  
3296 bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting



creditors' rights generally and by general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law.

4. The execution and delivery of the Agreement by GT USA do not, and the performance of its obligations thereunder will not, violate: (A) any provision of GT USA's organizational documents or (B) any applicable Delaware statute, rule or regulation, other than Chapter 87 of Title 29 of the Delaware Code or other laws and regulations relating to the process of approval and implementation of the of the lease of the Premises and the privatization of the Port, about which we provide no opinion.

5. No consent or approval of, authorization by, or filing or recording with, any Delaware governmental authority is required to be made or obtained by GT USA in connection with the execution and delivery by GT USA of the Agreement or the performance of its obligations thereunder.

The laws covered by this opinion are limited to the present federal law of the United States and the present laws of the State of Delaware. We express no opinion as to the law of any other jurisdiction and no opinion regarding the statutes, administrative decisions, rules, regulations, or requirements of any county, municipality, subdivision or local authority of any jurisdiction.

This opinion is furnished by us as special counsel to GT USA and may be relied upon by you only in connection with this Agreement. It may not be used or relied upon by you for any other purpose or by any other person, nor may copies be delivered to any other person, without in each instance our prior written consent.

Respectfully submitted,

[Counsel to GT USA]

**APPENDIX 2-2**

**BILL OF SALE**

**KNOW ALL MEN BY THESE PRESENTS, that the Diamond State Port Corporation, a Delaware corporation created in the Department of State of the State of Delaware with an office and place of business at 1 Hausel Road, Wilmington, DE 19801-5882 (the "Grantor"), for and in consideration of One United States Dollar (U.S. \$1.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell, transfer and delivery unto GT USA WILMINGTON, LLC, a Delaware limited liability company (the "Grantee"), all rights, title and interest of the Grantor in the Original Assets, subject to the Permitted Liens as such terms are defined in that certain Concession Agreement dated as of \_\_\_\_\_, 2018 between Grantor and Grantee.**

**IN WITNESS WHEREOF, the party below has executed this Bill of Sale as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018.**

**DIAMOND STATE PORT CORPORATION**

By: \_\_\_\_\_  
Jeffrey W. Bullock  
Chairperson



3345 **APPENDIX 2-3**

3346 **ASSIGNMENT AND ASSUMPTION AGREEMENT**

3347 This **ASSIGNMENT AND ASSUMPTION AGREEMENT** (this "Agreement") is  
3348 dated and effective as of \_\_\_\_\_, 2018 (the "Effective Date") by and between  
3349 the DIAMOND STATE PORT CORPORATION, a Delaware corporation created in the  
3350 Department of State of the State of Delaware with an office and place of business at 1 Hausel  
3351 Road, Wilmington, DE 19801-5882 ("Assignor"), and GT USA WILMINGTON, LLC, a  
3352 Delaware limited liability company ("Assignee").

3353 **RECITALS**

3354 A. Assignor and Assignee are parties to that certain Concession Agreement dated  
3355 \_\_\_\_\_, 2018 (the "Agreement"), with a Commencement Date as defined therein.

3356 B. Under and pursuant to the terms of the Agreement, Assignor has agreed to assign  
3357 certain third-party leases, contracts and agreements as such leases, contracts and agreement are  
3358 identified and described in APPENDIX 2-4 of the Agreement and Exhibit A hereto (collectively,  
3359 the "Contracts"). To the extent of any discrepancy between APPENDIX 2-4 of the Agreement  
3360 and Exhibit A to this Agreement, Exhibit A shall govern and control.

3361 C. In accordance with the terms and conditions of this Agreement, Assignor wishes  
3362 to assign all of its right, title and interest in and to the Contracts, and Assignee agrees to assume  
3363 all obligations of Assignor under the Contracts, arising on and after the Effective Date of this  
3364 Agreement.

3365 D. Assignor has determined that such assignment to Assignee is in the best interests  
3366 of Assignor.

3367 **NOW THEREFORE**, in consideration of the foregoing, and for other good and valuable  
3368 consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby  
3369 agree as follows:

3370 1. **Assignment and Delegation**. Assignor hereby assigns to Assignee all of its right,  
3371 title and interest in, to and under the Contracts, and hereby delegates to Assignee all of its duties  
3372 and obligations arising under such Contracts on and from the Effective Date.

3373 2. **Assumption**. Assignee hereby accepts the foregoing assignment and delegation  
3374 and assumes all of the duties and obligations of Assignor under the Contracts arising after the  
3375 Commencement Date and with respect to the performance of any capital improvement obligation  
3376 that was required by Assignor under any Contracts regardless of whether such obligation arose  
3377 before or after the Effective Date (the "Assumed Liabilities"). Other than with respect to  
3378 Assumed Liabilities, the Assignor retains all liabilities arising under the Contracts prior to the  
3379 Commencement Date. Assignor shall protect, indemnify and hold harmless Assignee from and  
3380 against any and all liabilities, obligations, losses, damages, settlements, claims, actions, suits,  
3381 penalties, costs and expenses which relate to time periods prior to the Commencement Date (as

such term is defined in the Agreement) but expressly excluding any costs or liabilities arising under the Contracts which relate to the performance of any capital improvement obligation that was required by Assignor before or after the Commencement Date. Assignee shall protect, indemnify and hold harmless Assignor from and against any and all liabilities, obligations, losses, damages, settlements, claims, actions, suits, penalties, costs and expenses which shall at any time or from time to time be imposed upon, incurred by or asserted against Assignor in respect of the Assumed Liabilities.

3. **Representations and Warranties of Assignor.** Assignor represents and warrants to Assignee that (a) the Contracts have been duly and validly authorized, executed and delivered by Assignor, are in full force and effect and enforceable by Assignor in accordance with the terms thereof; (b) Assignor has not sold, transferred, encumbered, assigned or otherwise alienated its interest in and to the Contracts other than to Assignee pursuant to this Agreement except as described in the Agreement, (c) DSPC is a Delaware corporation created in the Department of State of the State of Delaware, (d) DSPC has full power, legal right and authority to enter into, execute and perform its obligations under this Agreement and to assign the Contracts to Assignee pursuant to the terms of this Agreement and (d) the Contracts are all of the material contracts and agreements that DSPC is a party to with respect to the Premises, the Original Assets and the operation of the Port.

4. **Representations and Warranties of Assignee.** Assignee represents and warrants to Assignor that it is a corporation duly organized and validly existing under the laws of the State of Delaware, and that it has full power, legal right and authority to enter into, execute and perform its obligations under this Agreement.

5. **Delivery of Notice.** Contemporaneously with the execution and delivery of this Agreement, Assignor and Assignee shall deliver written notice to each of the Contract counterparties that such Contract has been assigned by Assignor to Assignee as of the Commencement Date, that Assignee has assumed all of the duties and obligations of Assignor under such Contract and that all payments due under such Contract for all periods, and for all services performed, beginning on and after the Effective Date shall be made to Assignee and not Assignor.

6. **Governing Law.** This Agreement shall be governed by the laws of the State of Delaware.

8. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one and the same agreement.

9. **Further Cooperation.** Assignor agrees to execute and deliver such other documents, notices and consents and to undertake such other action as Assignee may reasonably request to carry out all the intents and purposes of this Assignment.



3420

3421       IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement as of  
3422 the day and year first set forth above.

**DIAMOND STATE PORT  
CORPORATION**, as Assignor

**GT USA WILMINGTON, LLC**, a Delaware  
limited liability company, as Assignee

By: \_\_\_\_\_  
Name: Jeffrey W. Bullock  
Title: Chairperson

By: \_\_\_\_\_  
Name: Peter Richards  
Title: Chief Executive Officer

3423   **Attach Exhibit A to Assignment and Assumption Agreement** [Exhibit should mirror Appendix A-4 of  
3424 this Agreement]  
3425  
3426

3427

APPENDIX 2-4

3428

ASSIGNED CONTRACTS

3429

3430

1. Lease Agreement by and between DSPC (assignee of the lease), and lessor, and [REDACTED] (assignee of the lease), as lessee dated as of July 31, 1990.

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3432

2. Lease Guaranty relating to [REDACTED] obligations under the [REDACTED] by [REDACTED] for the benefit of DSPC.

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3. Facilities Lease Agreement between DSPC, as lessor, and [REDACTED], as Lessee, dated as of January 1, 2009, as amended by the First Amendment to Facilities Lease Agreement dated as of January 1, 2014.

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4. Agreement between DSPC (successor in interest to the City of Wilmington), as landlord, and [REDACTED], as tenant, dated as of September 22, 1983, in which as amended by the First Amendment to [REDACTED], the Second Amendment to [REDACTED] and the Third Amendment to [REDACTED]

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5. Ground Lease between DSPC, as lessor, and [REDACTED] as agent, dated as of January 1, 2009, as amended by the First Amendment to Ground Lease dated as of September 22, 2010 and the Second Amendment to Ground Lease dated as of January 1, 2014.

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6. [REDACTED] Agreement for the [REDACTED] to the Port of Wilmington, Delaware for the [REDACTED] between DSPC and [REDACTED] dated as of August 16, 2018.

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7. Port Services Agreement by and between DSPC and [REDACTED] dated as of July 2014, as amended by the First Amendment to the [REDACTED] dated as of March 9, 2016.

3452

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8. Lease between DSPC, as landlord, and [REDACTED] as tenant, effective as of April 1, 2008, as amended by the First Amendment to Lease dated as of November 14, 2008.

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3456

9. [REDACTED] dated as of June 30, 2008 between DSPC and [REDACTED] as amended.

3457

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10. Lease and Services Agreement dated as of December 10, 2013 between DSPC and [REDACTED], as amended.

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3461

11. The Master Services Agreement between [REDACTED] and DSPC, dated May 15, 2009, as amended by that certain Amendment No. 1 to the Master Services Agreement, dated April 7, 2016.



- 3462 12. The [REDACTED] Agreement between DSPC and [REDACTED]  
3463 dated October 27, 2017.
- 3464 13. The [REDACTED] between [REDACTED] and DSPC,  
3465 effective July 1, 2015.
- 3466 14. The [REDACTED] Agreement between [REDACTED] and DSPC,  
3467 dated November 1, 2017 (expired May 31, 2018).
- 3468 15. The Statement of Work between DSPC and [REDACTED], dated May 3, 2017,  
3469 as amended by that certain First Amendment to the Statement of Work, dated July 20,  
3470 2017.
- 3471 16. The U.S. Government Lease for Real Property, No. GS-03B-09313, between DSPC and  
3472 the U.S. Government, dated May 19, 2009.
- 3473 17. The Lease Agreement between DSPC and [REDACTED], dated February 26,  
3474 2016.
- 3475 18. The Lease Agreement, between DSPC and [REDACTED] dated November 10,  
3476 2015, as amended.
- 3477 19. The Lease Agreement, between DSPC and [REDACTED] dated  
3478 February 23, 2001, as amended.
- 3479 20. The Lease Agreement between DSPC and [REDACTED]  
3480 [REDACTED], dated November 18, 1999, as amended.
- 3481 21. The Lease Agreement between DSPC and [REDACTED], dated November 4, 2015,  
3482 as amended.
- 3483 22. The Lease Agreement between DSPC and [REDACTED] dated November 4, 2015,  
3484 as amended.
- 3485 23. The Lease Agreement between DSPC and [REDACTED] dated  
3486 November 28, 2008, as amended.
- 3487 24. The Lease Agreement between DSPC and [REDACTED]  
3488 [REDACTED], dated October 1, 2014, as amended.
- 3489 25. The Lease Agreement between DSPC and [REDACTED], dated October 10,  
3490 2007, as amended.
- 3491 26. The Lease Agreement between DSPC and [REDACTED], dated  
3492 September 1, 2010, as amended.
- 3493 27. The Lease Agreement between DSPC and [REDACTED], dated November 30,  
3494 2011, as amended.

- 3495 28. The Lease Agreement between DSPC and [REDACTED], dated November 2014, as  
3496 amended.
- 3497 29. The Lease Agreement between DSPC and [REDACTED], Inc., dated November 30,  
3498 2011, as amended.
- 3499 30. The Lease Agreement between DSPC and [REDACTED], dated September 3,  
3500 2004, as amended.
- 3501 31. Agreement dated as of June 13, 2003 between DSPC and [REDACTED] as  
3502 amended by the First Amendment thereto dated as of October 1, 2013.
- 3503
- 3504 32. The Lease Agreement No. 57-6395-13-028 dated November 12, 2013, between DSPC and  
3505 the U.S. Government, as amended.
- 3506 33. The [REDACTED], dated May 1999, between DSPC and  
3507 [REDACTED]
- 3508 34. The Lease dated August 22, 1989, between the City of Wilmington and [REDACTED]  
3509 [REDACTED], as amended.
- 3510 35. The Memorandum of Understanding, dated November 10, 2010, between [REDACTED]  
3511 and DSPC.
- 3512 36. The Agreement, dated February 2, 1932, between the [REDACTED],  
3513 [REDACTED] Harbor  
3514 [REDACTED]
- 3515 37. Ground Lease dated as of January 1, 2002 between DSPC and [REDACTED]
- 3516 38. Master Service Agreement [REDACTED]  
3517 [REDACTED] between [REDACTED] issued October 27, 2017

3518 **Section 2.6(b) Wilmington South Disposal Area Contracts.**

3519 *DSPC and GT USA agree that these will be included in the Assignment and Assumption*  
3520 *Agreement and will be deemed automatically assigned and assumed upon receipt of third party*  
3521 *consent from Department of Army.*

- 3522 1. Department of the Army Lease Wilmington Harbor Navigation Project Wilmington  
3523 Harbor South Confined Disposal Area, New Castle County, Delaware (Lease No. DACW-  
3524 31-1-19-001) between the Secretary of the Army and DSPC (Autoport).
- 3525 2. Department of the Army Lease Wilmington Harbor Navigation Project Wilmington  
3526 Harbor South Confined Disposal Area, New Castle County, Delaware (Lease No. DACW-  
3527 31-1-14-404) between the Secretary of the Army and DSPC (Autoport).



- 3528 3. Department of the Army Lease Wilmington Harbor Navigation Project Wilmington  
3529 Harbor South Confined Disposal Facility, New Castle County, Delaware (Lease No.  
3530 DACW-31-1-19-022) between the Secretary of the Army and DSPC (FPOR).
- 3531 4. Department of the Army Lease Wilmington Harbor Navigation Project Wilmington  
3532 Harbor South Confined Disposal Facility, New Castle County, Delaware (Lease No.  
3533 DACW-31-1-14-405) between the Secretary of the Army and DSPC (FPOR).
- 3534 5. The Department of the Army Lease, Wilmington Harbor Navigation Project, New Castle  
3535 County, Delaware, No. DACW-31-1-16-605, between the Secretary of the Army and  
3536 DSPC, dated April 11, 2017.

3537 APPENDIX 2-5

3538 DSPC OPINION OF COUNSEL<sup>1</sup>

3539  
3540 [Letterhead of Morris, Nichols, Arsht & Tunnell LLP]

3541 \_\_\_\_\_, 2018

3542 GT USA Wilmington, LLC  
3543 1 Hausel Road  
3544 Wilmington, DE 19801-5882

3545 Ladies & Gentlemen:

3546 We are counsel to The Diamond State Port Corporation ("DSPC"), in connection with the  
3547 concession and lease by and between DSPC and GT USA Wilmington, LLC ("GT USA"), dated  
3548 as of \_\_\_\_\_, 2018, (the "Agreement") relating to the operation and further  
3549 development of the Port of Wilmington's situation on land identified as the Premises identified  
3550 in this Agreement. This opinion is being delivered to you pursuant to APPENDIX 2(a)(vii) of  
3551 this Agreement. Capitalized terms used and not otherwise defined herein shall have the  
3552 respective meanings set forth in this Agreement.

3553 In our capacity as such counsel, we have examined originals, or copies certified or  
3554 otherwise identified to our satisfaction as being true copies of the originals, of (i) this Agreement  
3555 and (ii) such corporate and other records and documents we considered appropriate as the basis  
3556 for the opinions set forth below.

3557 For purposes of this opinion, we have assumed the genuineness of all signatures, the  
3558 authenticity of all documents submitted to us as originals and the conformity to the originals of  
3559 all documents submitted to us as copies.

3560 On the basis of such examination and subject to the qualifications and limitations in this  
3561 opinion, we are of the opinion that:

3562 1. DSPC is a body politic and corporate formed under Chapter 87 of Title 29 of the  
3563 Delaware Code and is validly existing in good standing under the laws of Delaware, with power  
3564 to enter into this Agreement, and to perform its obligations under this Agreement.

3565 2. The execution, delivery, and performance of this Agreement have been duly  
3566 authorized by all necessary corporate action on the part of DSPC, and this Agreement has been  
3567 duly executed and delivered by DSPC.

3568 3. This Agreement constitutes the legally valid and binding obligation of DSPC,  
3569 enforceable against DSPC in accordance with its terms, except as may be limited by bankruptcy,

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<sup>1</sup> Subject to further standard assumptions and qualifications



insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally and by general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law.

4. The execution and delivery of the Agreement by DSPC do not, and the performance of its obligations thereunder will not, violate: (A) any provision of DSPC's organizational documents or (B) any applicable Delaware statute, rule or regulation including Chapter 87 of Title 29 of the Delaware Code or other laws and regulations relating to the process of approval and implementation of the lease of the Premises and the privatization of the Port.

5. No consent or approval of, authorization by, or filing or recording with, any Delaware governmental authority that has not already been obtained is required to be made or obtained by DSPC in connection with the execution and delivery by DSPC of the Agreement or the performance of its obligations thereunder.

The laws covered by this opinion are limited to the present laws of the State of Delaware. We express no opinion as to the law of any other jurisdiction and no opinion regarding the statutes, administrative decisions, rules, regulations, or requirements of any county, municipality, subdivision or local authority of any jurisdiction.

This opinion is furnished by us as special counsel to DSPC and may be relied upon by you only in connection with this Agreement. It may not be used or relied upon by you for any other purpose or by any other person, nor may copies be delivered to any other person, without in each instance our prior written consent.

Respectfully submitted,

Morris, Nichols, Arsht & Tunnell LLP

### APPENDIX 3

#### PERMITS TO BE ASSIGNED

##### **A. PORT OF WILMINGTON**

##### **1. Existing Permits to be Transferred from POW to GT USA Wilmington Prior to Closing**

###### **Air**

- APC-2007/0041-Construction/Operation - Amendment 1 (Issued March 21, 2011)  
C-4 Crane, C-5 Crane, C-4 Hopper, C-5 Hopper, American Minerals Hopper, mechanical sweepers, portable vacuum dust suppression system and associated equipment
- APC-2018/0047-Construction (Issued January 31, 2018)  
Environmental Hopper
- APC-2011/0151-Operation (Issued March 30, 2012)  
Mobile Belt Feeder and Ship loader
- APC-2011/0159-Operation (Issued March 26, 2012)  
Mobile Harbor Crane and two (2) clamshell grabs
- APC-2017/0084-Operaton – FE (issued September 12, 2017)  
Gantry Crane C-6
- APC-2017/0085-Operaton – FE (issued September 12, 2017)  
Gantry Crane C-7

###### **Water**

###### **Surface Water Discharges**

- Stormwater Plan (dated February 18, 2018)
- NPDES General Stormwater Permit

###### **Wetlands and Subaqueous Lands**

- LA-300/18 – Maintenance repairs at Berth 6 (expires August 2, 2021)



- SP-434/18 – Installation of new support piles for 2 new cranes (expires December 29, 2019)

#### **Waste and Hazardous Substances – Boiler Safety Program**

##### **Certificates of Inspection**

- # DE53666  
Compressor – Shop
- # DE68657  
Compressor – Warehouse C Humidification
- # DE68658  
Compressor – Warehouse B Humidification
- # DE68659  
Compressor – Warehouse B Fire System
- # DE79093  
Compressor – Warehouse C Sprinkler System
- #DE 5630  
Compressor - Warehouse A Humidification
- #DE76059  
Compressor - Warehouse E
- #DE76060  
Compressor - Warehouse E
- #DE76062  
Compressor - Warehouse E
- #DE76063  
Compressor - Warehouse E
- //DE77044  
Compressor - Warehouse F
- #DE79093  
Compressor -- Warehouse C Sprinkler System
- #DE84090

Compressor Warehouse F Sprinkler

- #DE84091

Compressor Warehouse F Sprinkler

- #DE84092

Warehouse F Sprinkler

## 2. Transfers/Notifications Post Closing

**Air Emissions Reduction Credits** – GTUSA Wilmington and POW make notification within 30 days after trade

- VOC's and NOx credits transferred from Chemours

**Above Ground Storage Tank Registrations** – GTUSA Wilmington to notify DNREC within 72 hours of closing

- 6,000 Gallon Gasoline
- 8,000 Gallon Diesel Fuel

## 3. Active Air Permit Applications Under Review – GT USA Wilmington becomes applicant

### Cranes

- Application for Permit to Construct (Original submission: September 9, 2016)  
Crane C-1
- Application for Permit to Construct (Original submission: September 9, 2016)  
Crane C-4
- Application for Permit to Construct (Original submission: September 9, 2016)  
Crane C-5

### Fumigation

- Application for Permit to Construct (Original submission: April 30, 2012)

## 4. Applicable Non-Permit Documents

### Air

### Bulk Materials Handling



- Conciliation Order by Consent – Secretary's Order No. 2007-A-0007 (Issued March 2, 2007)
- Interim Operating Practices dated July 27, 2007

#### **Fumigation**

- Conciliation Order by Consent – Secretary's Order No. 2012-A-0012 (Issued April 17, 2012)

#### **Water**

##### **Clean Water Act/Stormwater**

- Spill Prevention, Control and Countermeasures Plan (dated January 18, 2018)

#### **5. Non-Environmental/DNREC Permits**

##### **City of Wilmington Fire Marshal's Office**

- Fire Permit – F045 Flam Comb Liq – Above Ground (Permit No. 000697)
- Fire Permit – F135 Welding, Cutting and Burning (Permit No. 000276)

#### **B. EDGEMOOR**

##### **1. Existing Permits to be Transferred from POW to GT USA Wilmington Prior to Closing**

##### **Water**

- Subaqueous Lands lease (SL-368/16) – Originally issued to Chemours, name changes to Diamond State Port Corporation (changing for a lease to a permit, in progress not issued)

##### **2. Existing Permits to Remain with POW (TBD)**

##### **Waste and Hazardous Substances**

- RCRA Corrective Action Permit HW-03A16

##### **3. Non-Environmental/DNREC Permits**

3766

3767

**United States Coast Guard**

3768

- Private Aid to Navigation Warning Buoy (LL 3090.1)

3769



3770

**APPENDIX 4**

3771

**DSPC COMPLIANCE WITH LAWS**

3772

3773 Pending applications for bulk handling permits and methyl bromide permits.

3774

3775

3776

## APPENDIX 5

## PIGEON POINT PROPERTY

## SCHEDULE D-1

## Pigeon Point Property

PARCEL NO. 10,011.00-014

PARCEL NO. 1. ALL that certain farm plantation or tract of land, situate partly in New Castle Hundred and partly in the City of Wilmington, New Castle County, State of Delaware, more particularly bounded and described as follows, to wit:

BEGINNING at the point of intersection of the Southwesterly right of way line of lands of the Reading Railroad, Delaware River Extension Branch with the Easterly right of way line of other lands of the Reading Railroad known as the South Extension of the Delaware River Extension Branch, said point of Beginning being distant the three following described courses and distances measured along the said Southwesterly right of way line of the Reading Railroad, Delaware River Extension Branch and the extension thereof from the point of intersection thereof with the Easterly right of way line of the Penn Central Railroad, New Castle Cut-Off, at one hundred (100) feet wider: (1) South forty-one (41) degrees, twenty-eight (28) minutes, ten (10) seconds East, two hundred fifty (250) feet to a point; (2) South forty-eight (48) degrees, thirty-one (31) minutes, fifty (50) seconds West, twenty (20) feet to a point; and (3) South forty-one (41) degrees, twenty-eight (28) minutes, ten (10) seconds East, twenty-three hundred seventeen and twelve one-hundredths (2317.12) feet to said point of Beginning; thence from said point of Beginning and along line of lands of said Reading Railroad, Delaware River Extension Branch, the three following described courses and distances: (1) South forty-one (41) degrees, twenty-eight (28) minutes, ten (10) seconds East, one hundred thirty-five and eighty-eight one-hundredths (135.88) feet to a point; (2) South forty-six (46) degrees, fifty-nine (59) minutes, ten (10) seconds East, nine hundred thirty (930) feet, more or less, to a point; and (3) South sixty-seven (67) degrees, twenty-five (25) minutes, ten (10) seconds East, three hundred thirty (330) feet, more or less, to a point in the low water line of the Delaware River, as said low water line is established by a field survey by Van Demark & Lynch, Inc. in February, 1970; thence along the said low water line of the Delaware River by the various courses thereof in a generally Southwesterly direction, twelve hundred sixty (1260) feet more or less to a point, a corner for said other lands of the Reading Railroad, South extension of the Delaware River Extension Branch, said point being distant by a tie line of South forty (40) degrees, forty-seven (47) minutes, no (00) seconds West, eleven hundred forty-eight and ten one-hundredths (1148.10) feet from the last described point; thence along the line of said other lands of the Reading Railroad, the three following described courses and distances: (1) North sixty-four (64) degrees, seventeen (17) minutes, no (00) seconds West, six hundred ten (610) feet, more or less, to a point; (2) thence along a line parallel with the center line of the existing four sets of track, said



course being fifteen (15) feet Easterly of the center line of the two Easterly sets of track measured at right angles thereto, North ten (10) degrees, thirty-seven (37) minutes, no (00) seconds East, twelve hundred fifty-three and sixty-two one-hundredths (1253.62) feet to a point of curvature; and (2) Northerly along a curve to the left having a radius of five hundred sixty-one and two one-hundredths (561.02) feet, an arc distance of two hundred thirty-seven and twenty-eight one-hundredths (237.28) feet to the point of intersection thereof with the said Southwesterly right of way line of the Reading Railroad, Delaware River Extension Branch and the point and place of BEGINNING, said point being distant by a chord of North one (1) degree, thirty (30) minutes, no (00) seconds West, two hundred thirty-five and fifty-one one-hundredths (235.51) feet from the last described point.

PARCEL NO. 2. All that certain farm, plantation, or tract of land, situate in New Castle Hundred, New Castle County and State of Delaware, being more particularly bounded and described as follows, to wit:

BEGINNING at the point of intersection of the Easterly right of way line of the Penn Central Railroad, New Castle Cut-Off, at one hundred (100) feet wide, with the Southwesterly right of way line of the Reading Railroad, the Delaware River Extension Branch, at sixty (60) feet wide; thence from said point of Beginning and along the said Southwesterly right of way line of the Reading Railroad, the three following described courses and distances: (1) South forty-one (41) degrees, twenty-eight (28) minutes, ten (10) seconds East, two hundred fifty (250) feet to a point; (2) thence South forty-eight (48) degrees, thirty-one (31) minutes, fifty (50) seconds West, twenty (20) feet to a point on the said right of way line of the Reading Railroad, at one hundred (100) feet wide; and (3) thence still thereby, South forty-one (41) degrees, twenty-eight (28) minutes, ten (10) seconds East, twelve hundred and ninety feet to the point and place of Beginning; thence from the said point of Beginning, the six following described courses and distances: (1) South forty-one (41) degrees, twenty-eight (28) minutes, ten (10) seconds East, nine hundred fifty-nine and fifty-nine one-hundredths (959.59) feet to the point of intersection thereof with the Westerly right of way line of other lands of the Reading Railroad, known as the South Extension of the Delaware River Extension Branch, at thirty (30) feet wide; (2) Southerly along a curve to the right having a radius of five hundred thirty-one and two one-hundredths (531.22) feet from the last described point; (3) thence along a line parallel with the center line of the existing four sets of track, said course being fifteen (15) feet Westerly of the center line of the two Easterly sets of track measured at right angles thereto, South ten (10) degrees, thirty-seven (37) minutes, no (00) seconds West, fourteen hundred fifty-three and sixty-two one-hundredths (1453.62) feet to a point of curvature; (4) thence Southerly along a curve to the left having a radius of four hundred fifty-seven (457) feet, an arc distance of two hundred seven and twenty-five one-hundredths (207.25) feet to the point of tangency of said curve, said point being distant by a

chord of South two (2) degrees, twenty-two (22) minutes, thirty (30) seconds East, two hundred five and forty-eight one-hundredths (205.48) feet from the last described point; (5) thence South fifteen (15) degrees, twenty-two (22) minutes, no (00) seconds East, three hundred twenty-eight (328) feet to a point; and (6) thence South sixty-four (64) degrees, seventeen (17) minutes, no (00) seconds East, eighty (80) feet, more or less, to a point on the low water line of the Delaware River; thence along said low water line of the Delaware River in a generally Southwesterly direction, eight hundred fifty (850) feet, more or less, to a point, a corner for lands for the State of Delaware, Memorial Bridge Approach, said point being distance by a tie line of South thirty-seven (37) degrees, forty-one (41) minutes, thirty (30) seconds West, eight hundred forty-two and twenty-two one-hundredths (842.22) feet from the last described point; thence along line of said lands of the State of Delaware, Memorial Bridge Approach, the eight following described courses and distances: (1) North sixty-six degrees, twenty-nine (29) minutes, fifty-nine (59) seconds West, fourteen hundred twenty-six and seventy-one one-hundredths (1426.71) feet, more or less, to an existing monument; said course crossing over an existing monument at a distance Northwesterly of two hundred twenty-four and thirty-four one-hundredths (224.34) feet more or less from the said low water line; (2) North thirty-three (33) degrees, five (05) minutes, twenty-one (21) seconds East, three hundred forty-four and thirty-two one-hundredths (344.32) feet to a point; (3) North sixty-three (63) degrees, forty-two (42) minutes, twenty-seven (27) seconds West, six hundred twenty-eight and seventy-four one-hundredths (628.74) to a point; (4) South seventy-five (75) degrees, fifty-two (52) minutes, three (03) seconds West, one hundred ninety-five and four one-hundredths (195.04) feet to a point; (5) North no (00) degrees, twenty-six (26) minutes, thirty-three (33) seconds East, five hundred sixty-one and forty one-hundredths (561.40) feet to a point; (6) North thirty-four (34) degrees, forty-six (46) minutes, twenty-nine (29) seconds East, eleven hundred fifty-six and sixty-seven hundredths (1156.67) feet to a point, a corner for lands of the State of Delaware; (7) South sixty-six (66) degrees, twenty-four (24) minutes, forty (40) seconds East, six hundred forty-nine and thirty-five hundredths (649.35) feet to a point; and North twenty-three (23) degrees, thirty-five (35) minutes, twenty (20) seconds East, fourteen hundred thirty and sixty-eight one-hundredths (1430.68) feet to a point and place of Beginning.

CONTAINING WITHIN SUCH METES AND BOUNDS OF BOTH PARCELS HEREBYWITHIN DESCRIBED 141.30 ACRES.



## APPENDIX 6

## WILMINGTON SOUTH DISPOSAL AREA

## WILMINGTON SOUTH DISPOSAL AREA

A certain tract of land situate in the State of Delaware, New Castle County, City of Wilmington and more particularly bounded and described as follows:

**BEGINNING** for the same at a 3 inch aluminum monument with disc (hereinafter referred to as a standard marker) at the end of the Second Line of that parcel of land known as Tract 100 and as described in a Deed dated November 19, 1985 and recorded in the Office of the Recorder of Deeds in and for New Castle County in Deed Book 309 at Page 093 which was granted and conveyed by the Delaware Solid Waste Authority to the Secretary of the Army, United States of America and running thence bounding reversely along said Second Line, as now surveyed, North 87° 38' 07" West, 25.00 feet to a standard marker, thence leaving said Second Line and severing the lands of the subject owner for lines of division, the four (4) following courses, viz.:

- (1) North 15° 33' 37" East, 298.30 feet,
- (2) North 11° 24' 57" East, 530.49 feet,
- (3) North 17° 00' 45" East, 700.66 feet, and
- (4) North 54° 31' 50" East, 150.23 feet to a standard marker on and distant South 87° 31' 03" East 1,252.31 feet from the beginning of the Fourth Line of that parcel of land described in a Deed dated July 30, 1980 and recorded in the aforesaid Office of the Recorder of Deeds in Deed Record I, Volume 111, Page 285 which was granted and conveyed by New Castle County to the City of Wilmington said point also being distant South 87° 31' 03" East, 37.31 feet from monument "A" found on said line and running thence bounding along part of said line, South 87° 31' 03" East, 100.85 feet to a standard marker thence leaving said line and continuing to sever the lands of the subject owner for lines of division the five (5) following courses, viz.:

- (1) South 87° 31' 03" East, 202.00 feet,
- (2) South 75° 31' 03" East, 196.00 feet,
- (3) North 47° 15' 38" East, 550.00 feet,
- (4) North 23° 07' 45" East, 700.00 feet and
- (5) South 67° 12' 29" East, 954.81 feet to a point on and distant South 22° 03' 59" West, 694.98 feet from the beginning of the South 22° 03' 59" West, 1994.11 feet Line as shown on an unrecorded Boundary Survey of Port of Wilmington, City of Wilmington Marine Terminal by Mann-Telley, Engineers and Surveyors dated October 14, 1991, thence leaving said Line and continuing along the same course extending out into the Delaware River, South 67° 12' 29" East, 813.19 feet to a point on or near the -24 elevation contour line as shown on a Topographic Survey of Wilmington Harbor South Disposal Area Development by the Army Corps of Engineers dated from February 2, 1983 to June 11, 1984 and running thence, ascending along said -24 elevation contour line within the Delaware River, the nine (9) following courses, viz.:

- (1) South 22° 47' 31" West, 239.00 feet,
- (2) South 05° 32' 31" West, 264.00 feet,
- (3) South 16° 52' 31" West, 1,119.00 feet,
- (4) South 23° 02' 31" West, 815.00 feet,
- (5) South 21° 54' 31" West, 1,320.33 feet,
- (6) South 33° 21' 25" West, 544.00 feet,
- (7) South 30° 21' 25" West, 757.00 feet,
- (8) South 15° 50' 25" West, 618.00 feet,
- (9) South 16° 36' 25" West, 104.02 feet to a point thereon thence leaving said -24 elevation contour line and crossing said Delaware River, North 67° 08' 35" West, 881.16 feet to a point on the southernmost corner of that parcel of land described in a Deed dated July 7, 1981 and recorded in the aforesaid Office of the Recorder of Deeds in Deed Record N, Volume 115, Page 80 which was granted and conveyed by the Wilmington and Northern Railroad Company, et al, to the City of Wilmington and running thence bounding along the southwest and northwest outlines described in the aforesaid Deed the five (5) following courses, viz.:

- (1) North 63° 47' 47" West, 317.61 feet,
- (2) North 79° 12' 26" West, 140.30 feet,
- (3) 385.00 feet in a westerly direction along the arc of a curve to the right having a radius of 688.20 feet and a long chord bearing and distance of North 57° 19' 49" West, 380.00 feet,
- (4) North 41° 18' 14" West, 791.88 feet and
- (5) North 48° 41' 46" East, 44.00 feet to a point on the division line of that parcel of land described in the aforesaid deed and said Tract No. 100 as described in the heretofore first mentioned Deed and running thence bounding along said division line, 417.57 feet to a southeasterly

3786  
3787

direction along the arc of a curve to the left having a radius of 3,819.83 feet and a long chord bearing and distance of South 45° 51' 00" East, 417.36 feet to a standard marker at the end of the Fifth Line described in the aforesaid Deed and running thence thence binding reversely along said Fifth Line and reversely along the Fourth and Third Lines of said Deed, the three (3) following courses, viz.:

- (1) North 13° 30' 26" East, 1,712.00 feet to a standard marker,
- (2) North 10° 57' 38" East, 577.49 feet to a standard marker,
- (3) North 19° 58' 38" East, 196.30 feet to a standard marker to the point of beginning containing 299.134 acres of land more or less of which 75.730 acres more or less is submerged land.

The bearings used herein are referenced to the Delaware State Grid System.

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3790 APPENDIX 7

3791 INFRASTRUCTURE PRESERVATION

3792 GT USA will maintain the existing infrastructure and facilities to ensure long-term, unimpaired  
3793 availability of the Port for safe, effective, productive operations.

3794 Wharf Fixtures: GT USA shall repair or replace fixtures on the wharf as damage is discovered  
3795 during routine, regular inspections, or as damage is reported in the course of operations. This  
3796 includes fenders, moorings, bollards, crane tie-downs, crane stow-sockets, crane emergency stop  
3797 structures, crane rails and fastenings, and crane power feeds.

3798 Wharf Infrastructure: GT USA shall periodically inspect the wharf's supporting piles, sheet piles  
3799 and substructure, continuing DSPC's current pattern and recurrence interval. This shall involve  
3800 visual inspections and, as needed, non-destructive instrumented examination. GT USA shall  
3801 periodically identify and, if necessary, repair and replace wharf and sheet piles in order to  
3802 maintain the structural integrity of the wharf. GT USA shall also commission repairs, as needed,  
3803 to the wharf substructure.

3804 Pavement Systems: GT USA shall regularly conduct visual surveys of the terminal pavement  
3805 surfaces, and identify areas of deterioration which indicate imminent progressive deterioration.  
3806 Where appropriate, GT USA shall apply surface repairs to deter further degradation.

3807 Major Overlays: GT USA shall excise and replace selected paved areas in order to restore safe,  
3808 effective operations, or apply a new surface layer.

3809 Utility Systems: GT USA shall regularly conduct visual surveys of water, sewer, power,  
3810 drainage, and data utilities, and make repairs as needed to restore proper and safe functioning in  
3811 accordance with applicable codes. GT USA shall regularly conduct visual surveys of the storm  
3812 drain system, and as necessary, remove and properly dispose of any sediment buildups that might  
3813 occur.

3814 Instruments and Equipment: GT USA shall regularly monitor the functioning of operating data  
3815 instrumentation and equipment, including gate instruments, truck scales, terminal lighting, spill  
3816 traps, and reefer installations. GT USA shall arrange to repair damage and replace failed  
3817 instruments as faults occur.

3818 Buildings and Warehouses: The terminal's operating and administration buildings and  
3819 warehouses shall be maintained and kept in condition proper for occupancy and use in  
3820 accordance with applicable building codes and health department ordinances. Periodic exterior  
3821 painting, siding, roof repair, and window maintenance shall be done to protect the weather  
3822 integrity of the buildings and warehouses. GT USA shall also regularly monitor and repair and  
3823 replace any sprinkler systems, refrigeration units, electrical systems, and air-conditioning, heat  
3824 and ventilation systems.

3825 Berth Dredging: Working with DSPC and the United States Army Corps of Engineers, GT USA  
3826 shall arrange for dredging of the berths to maintain proper operating depths in accordance with  
3827 Section 6.6 of the Agreement.

- 3828 Administration and Design: GT USA shall undertake the administration of these maintenance  
3829 activities, including any necessary design, permitting, contracting, construction, inspection, and  
3830 monitoring.
- 3831 Crane Maintenance: GT USA shall regularly monitor and maintain the ship to shore and facility  
3832 equipment.
- 3833 Cargo Handling Equipment Maintenance: GT USA shall regularly monitor and maintain the  
3834 cargo handling equipment.



3835 APPENDIX 8

3836 LETTER OF CREDIT

3837 Irrevocable Standby Letter of Credit No. \_\_\_\_\_

3838  
3839 Date of Issuance: \_\_\_\_\_

3840  
3841 **BENEFICIARY:**

3842 Diamond State Port Corporation  
3843 ATTN: Executive Director  
3844 c/o Department of State  
3845 820 N. French Street, 4th Floor  
3846 Wilmington, DE 19801

3847  
3848 At the request and for the account (GT USA Wilmington, LLC) ("Applicant"), we  
3849 STANDARD CHARTERED BANK ("Issuer")  
3850 2 GATEWAY CENTRE, 13TH FLOOR,  
3851 SUITE 1302  
3852 NEWARK, NJ 07102

3853 issue this irrevocable standby letter of credit number (**reference number**) ("Standby") in favor  
3854 of the Diamond State Port Corporation ("Beneficiary") in the maximum aggregate amount of US  
3855 \$15.0 million.

3856  
3857 Issuer undertakes to pay the Beneficiary's demand for payment in U.S. Dollars and for an  
3858 amount available under this Standby and in the form of the Annexed Payment Demand  
3859 completed and signed by an authorized officer as indicated and presented to Issuer at the  
3860 following place for presentation:

3861 2 GATEWAY CENTRE, 13TH FLOOR  
3862 SUITE 1302  
3863 NEWARK, NJ 07102

3864 on or before the expiration date or any future expiration date.

3865  
3866 It is a condition of this Standby that it shall be deemed automatically extended without  
3867 amendment for two year periods from the expiry date hereof or any future expiry date unless at  
3868 least sixty (60) days prior to such expiration date, we notify the Beneficiary at the above stated  
3869 address by overnight courier that we elect not to consider this Standby letter of credit renewed  
3870 for any such additional period.

3871  
3872 This Standby is being issued pursuant to the Concession Agreement dated \_\_\_\_\_, 2018  
3873 between Beneficiary and Applicant (the "Concession Agreement").

3874  
3875 The expiration date of this Standby is [date].

3876  
3877 Issuer hereby irrevocably undertakes to pay any amount not exceeding the Letter of Credit  
3878 amount, in immediately available funds, on submission of a demand in writing in the form of the  
3879 annex, from the Beneficiary stating that Applicant failed to perform its obligations under the

Concession Agreement. The submission of a demand shall be signed or endorsed by the Beneficiary. Payment against a demand shall be made within 3 business days after presentation by wire transfer to a duly requested account of Beneficiary. An advice of such payment shall be sent to Beneficiary's above-stated address.

Partial and multiple drawings are permitted.

Any payment made under this Standby shall reduce the amount available under it.

THIS STANDBY LETTER OF CREDIT IS ISSUED SUBJECT TO INTERNATIONAL STANDBY PRACTICES, ICC PUBLICATION NO. 590, 1998 AND AS TO MATTERS NOT GOVERNED BY THE ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

PLEASE BE ADVISED THAT OUR TRADE PROCESSING CENTER IS NOW LOCATED AT THE FOLLOWING ADDRESS:

STANDARD CHARTERED BANK  
2 GATEWAY CENTRE, 13TH FLOOR  
SUITE 1302  
NEWARK, NJ 07102

CONSEQUENTLY ANY REFERENCE TO EXPIRATION OF THIS LETTER OF CREDIT AND PRESENTATION UNDER THIS LETTER OF CREDIT AT OUR COUNTERS WILL MEAN OUR COUNTERS AT THE ABOVE NEWARK ADDRESS. KINDLY SEND ALL CORRESPONDENCE AND DOCUMENTS UNDER THIS CREDIT TO OUR NEWARK ADDRESS.

IN CASE OF NEED PLEASE BE GUIDED BY THE FOLLOWING:

FOR QUESTIONS RELATING TO ISSUANCE/AMENDMENT OF COMMERCIAL AND STANDBY LETTERS OF CREDIT, AS WELL AS CLARIFICATION OF LC TERMS AND CONDITIONS, PLEASE CALL BERNADETTE EDOUARD AT (201) 706-5310, DEBORAH CLARK AT (201) 706- 5306 OR YVONNE BOAKYE (201) 706-5302.

FOR QUESTIONS RELATING TO STATUS OF DOCUMENTS OR DRAWING(S) THAT HAVE ALREADY BEEN PRESENTED AND/OR THE RESPECTIVE PAYMENT, PLEASE CALL: KATHY PARK AT (201)706-5319 OR VIA FAX AT (973)474-5929 OR (973)474-5930.

WE HEREBY ENGAGE WITH YOU THAT ALL DOCUMENTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION FOR PAYMENT ON OR BEFORE THE EXPIRY DATE OF THIS LETTER OF CREDIT



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3927  
3928  
3929  
3930  
3931  
3932  
3933

STANDARD CHARTERED BANK

[signature]

---

Authorized Signature

Annexed Payment Demand

[Date]

STANDARD CHARTERED BANK  
2 GATEWAY CENTRE, 13TH FLOOR  
SUITE 1302  
NEWARK, NJ 07102

Re: Standby Letter of Credit No. [reference number],  
Dated [date]  
Issued by [Issuer's Name]  
("Standby")

The undersigned Beneficiary demands payment of [INSERT CURRENCY/AMOUNT] under the Standby.

Beneficiary states that Applicant has failed to perform its obligations under the agreement titled Concession Agreement dated \_\_\_\_\_ and therefore is obligated to pay Beneficiary the amount demanded [, which amount is due and unpaid] under such agreement.

Beneficiary requests that payment be made by wire transfer to account of Beneficiary as follows:

Diamond State Port Corporation  
ATTN: Executive Director  
c/o Department of State  
820 N. French Street, 4th Floor  
Wilmington, DE 19801

[ROUTING NUMBER OF BENEFICIARY'S BANK]  
[NAME AND NUMBER OF BENEFICIARY'S ACCOUNT]

**DIAMOND STATE PORT CORPORATION**

By its authorized officer:

[INSERT ORIGINAL SIGNATURE]  
[INSERT TYPED/PRINTED NAME AND TITLE]



**APPENDIX 9**

Tax Parcel Nos. 26-067.00-001  
26-067.00-002  
26-067.00-003  
26-067.00-004  
26-067.00-005  
26-073.00-002  
10-006.00-018  
26-064.00-002  
06-153.00-006  
06-153.00-003

Prepared by:  
Morris, Nichols, Arslit & Tumell LLP  
Attn: Katherine H. Betterly, Esquire  
1201 N. Market Street  
P.O. Box 1347  
Wilmington, DE 19899

**MEMORANDUM OF LEASE**

THE DIAMOND STATE PORT CORPORATION ("DSPC"), a Delaware corporation created by the Department of State of the State of Delaware, and GT USA WILMINGTON, LLC, a Delaware limited liability company ("GT USA"), do hereby declare, effective the \_\_\_\_ day of \_\_\_\_\_, 2018, this Memorandum of Lease:

Pursuant to that certain Concession Agreement executed effective \_\_\_\_\_, 2018 (the "Agreement"), DSPC demised and leased unto GT USA, and GT USA leased and demised from DSPC, that certain property described in the Agreement and more particularly described on Exhibit A attached hereto (the "Premises"), on and subject to the terms, covenants and conditions contained in the Agreement.

1. The term of the Agreement commenced as of \_\_\_\_\_, 2018 and shall expire on \_\_\_\_\_, 20\_\_ unless sooner terminated or extended as provided in the Agreement.

2. GT USA shall not assign the Agreement except in accordance with the terms of the Agreement. Unless specifically approved in writing by DSPC, no such assignment (except in accordance with the terms of the Agreement) will relieve GT USA from its obligations to perform all of the terms, covenants and conditions of the Agreement.

3. This Memorandum of Lease is intended only to provide notice of certain terms and conditions contained in the Agreement and is not to be construed as a complete summary of the terms and conditions thereof. In the event the terms contained herein conflict with the terms and conditions of the Agreement, the Agreement shall control.

4. Upon the earlier of termination or expiration of the Agreement, pursuant to the terms thereof, DSPC and GT USA shall execute a release of this Memorandum of Lease which shall be filed in the Office of the Recorder of Deeds in and for New Castle County, Delaware. If the Agreement has been properly terminated or has expired by its terms, then DSPC and GT

4013 USA agree to execute the release within ten (10) days after receipt of a written request for the  
4014 same by either party.

4015 5. Except as otherwise indicated, all initially capitalized terms used in this  
4016 Memorandum of Lease and not defined herein shall have the meanings ascribed to them in the  
4017 Agreement.

4018 IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease  
4019 as of the \_\_\_\_ day of \_\_\_\_\_, 2018

**DIAMOND STATE PORT CORPORATION**

Witness:

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Jeffrey W. Bullock  
Chairperson

4020 STATE OF DELAWARE )  
4021 ) ss.  
4022 COUNTY OF NEW CASTLE )

4023 I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2018,  
4024 before me, a Notary Public in and for the State and County aforesaid, personally appeared  
4025 Jeffrey W. Bullock, Chairperson of the Diamond State Port Corporation, known to me (or  
4026 satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed  
4027 instrument and acknowledged that said individual executed the same on behalf of Diamond State  
4028 Port Corporation for the purposes therein contained.

4029 IN WITNESS WHEREOF, I hereunto set my hand and official seal.

4030 \_\_\_\_\_  
4031 Notary Public

4032 My Commission Expires: \_\_\_\_\_ [Notary Seal]

4033



GT USA WILMINGTON, LLC

Witness:

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Peter Richards  
Chief Executive Officer

4034 STATE OF DELAWARE )  
4035 ) ss.  
4036 COUNTY OF NEW CASTLE )

4037 I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2018,  
4038 before me, a Notary Public in and for the State and County aforesaid, personally appeared Peter  
4039 Richards, known to me (or satisfactorily proven) to be the person whose name is subscribed to  
4040 the foregoing and annexed instrument and acknowledged that said individual executed the same  
4041 on behalf of GT USA Wilmington, LLC for the purposes therein contained.

4042 IN WITNESS WHEREOF, I hereunto set my hand and official seal.

4043 \_\_\_\_\_  
4044 Notary Public

4045 My Commission Expires: \_\_\_\_\_ [Notary Seal]

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4047

APPENDIX 10  
DRAWING OF PORT

Main Port Property:



New Castle County Delaware GIS: <http://gis.nccde.gov>  
Disclaimer: For informational purposes only - not to be used as official documentation



Date: 4/10/2018





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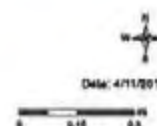
4057 Edgemoor:



Edgemoor



New Castle County Delaware GIS: <http://gis.newcastle.org>  
*Disclaimer: For informational purposes only - not to be used as official documentation.*



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4059

4060 APPENDIX 11

4061 **PERMITTED LIENS**

4062  
4063  
4064 Diamond State Port Corporation's security interest on Assets granted pursuant to Section 18.2 of  
4065 the Agreement.

4066  
4067 A Leasehold Mortgage, Security Agreement, Assignment of Subleases and Rents and Financing  
4068 Statement (Fixture Filing) by American Minerals, Inc., a Delaware corporation, as Mortgagor, to  
4069 Bank of Montreal, as Administrative Agent for and on behalf of the Lenders, as Mortgagee,  
4070 dated as of August 2, 2011, and recorded on August 16, 2011, in the Office of the Recorder of  
4071 Deeds in and for New Castle County, State of Delaware, as Instrument Number 20110816-  
4072 0050794.

4073  
4074 A Leasehold Mortgage, Assignment of Leases and Rents Security Agreement, Financing  
4075 Statement by American Premier, Inc., a Delaware corporation, successor by merger to Ralstan  
4076 Trading and Development Corporation and Mineral Development and Sales Company, the sole  
4077 partners in American Minerals, Mortgagor, to Continental Bank N.A., a national banking  
4078 association, Mortgagee, dated as of December 11, 1991, and recorded on December 17, 1991, in  
4079 the Office of the Recorder of Deeds in and for New Castle County, State of Delaware, in Deed  
4080 Book 2147, Page 304.

4081  
4082 Any other recorded leasehold mortgages granted by any tenants at the Existing Port. *[Note:*  
4083 *Parties agree to update this schedule prior to the Commencement Date to reflect the recording*  
4084 *information for such mortgages following the completion of GT USA's title review.]*

4085  
4086 \*\* City of Wilmington mortgages on Existing Port to be paid off and satisfied upon  
4087 Commencement Date.



4090 APPENDIX 12

4091 THIRD PARTY CONSENTS

4092  
4093 **REQUIRED CONSENTS:**

4094  
4095 1. [REDACTED]

4096 a. [REDACTED]  
4097 [REDACTED]  
4098 [REDACTED]

4099 2. [REDACTED]

4100 a. [REDACTED]  
4101 [REDACTED]  
4102 [REDACTED]

4103 3. DNREC

4104 a. Air Permit – Operation PCI Conveyor Issued on March 30, 2012 by the State of  
4105 Delaware Natural Resources and Environmental Control.

4106 b. Mobile Harbor Crane Permit Operating Permit APC-2017/0084 Crane C-7 and  
4107 Operating Permit APC-2017/0085 Crane C-6.

4108  
4109 **REQUESTED (BUT NOT REQUIRED) CONSENT:**

4110 1. [REDACTED]

4111 a. [REDACTED]  
4112 [REDACTED]

4113 **NOTICE REQUIREMENT ONLY: (Advance notice but no consent required)**

4114 1. [REDACTED]

4115 a. [REDACTED]  
4116 [REDACTED]  
4117 [REDACTED]  
4118 [REDACTED]

4119 **WILMINGTON HARBOR SOUTH:**

4120 *Wilmington Harbor South has been excluded from the definition of Premises but DSPC will seek*  
4121 *approval of the Department of Army to transfer any leasehold rights DSPC may have in such*

4122 *Wilmington Harbor South to GT USA; provided, the Parties agree that these consents shall not*  
4123 *be a condition to closing.*

4124 a. The Department of the Army Lease, Wilmington Harbor Navigation Project, New  
4125 Castle County, Delaware, No. DACW-31-1-16-605, between the Secretary of the  
4126 Army and DSPC, dated April 11, 2017.

4127 b. Department of the Army Lease Wilmington Harbor Navigation Project  
4128 Wilmington Harbor South Confined Disposal Area, New Castle County,  
4129 Delaware (Lease No. DACW-31-1-19-001) between the Secretary of the Army  
4130 and DSPC (Autoport).

4131 c. Department of the Army Lease Wilmington Harbor Navigation Project  
4132 Wilmington Harbor South Confined Disposal Area, New Castle County,  
4133 Delaware (Lease No. DACW-31-1-14-404) between the Secretary of the Army  
4134 and DSPC (Autoport).

4135 d. Department of the Army Lease Wilmington Harbor Navigation Project  
4136 Wilmington Harbor South Confined Disposal Facility, New Castle County,  
4137 Delaware (Lease No. DACW-31-1-19-022) between the Secretary of the Army  
4138 and DSPC (FPOR).

4139 e. Department of the Army Lease Wilmington Harbor Navigation Project  
4140 Wilmington Harbor South Confined Disposal Facility, New Castle County,  
4141 Delaware (Lease No. DACW-31-1-14-405) between the Secretary of the Army  
4142 and DSPC (FPOR).

4143

4144



**APPENDIX 13**  
**VOLUME SCHEDULE**

## VOLUME SCHEDULE

## VOLUME SCHEDULE

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**APPENDIX 14**

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GT USA CORPORATE GOVERNANCE, COMPLIANCE AND ANTI-CORRUPTION POLICY

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4156

[See attached]

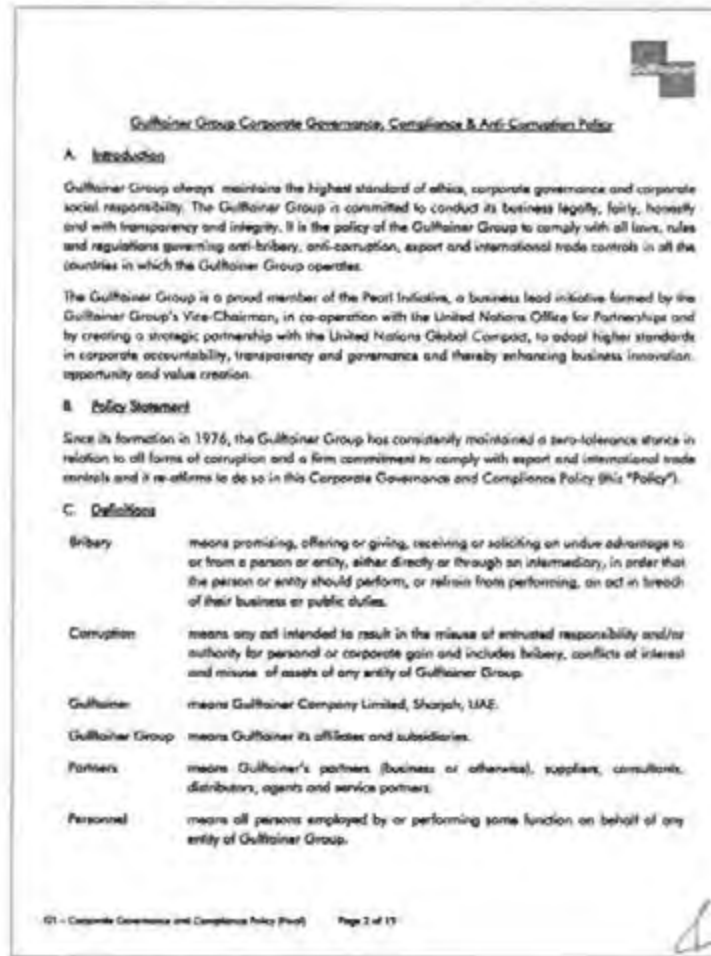
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## III. ANTI-CORRUPTION AND BRIBERY

### 1. Anti-Corruption Policy

Whilst conducting business anywhere in the world, neither the Gulfair Group nor any of its directors, employees, consultants, agents, Personnel and Partners shall indulge in any of the following acts:

#### 1.1 Bribery, which includes:

- a) Accepting an Unlawful Inducement for any reason and from any natural person or legal entity;
- b) Offering an Unlawful Inducement for any reason and to any natural person or legal entity;
- c) Offering or accepting cash or other forms of payment to secure a contract or obtain a license;
- d) Offering or accepting gifts or entertainment intended to influence the recipient to undertake a particular course of action;
- e) Offering or accepting donations with an ulterior motive; or
- f) payment of travel expenses or accommodation for a customer or official when there is no underlying business purpose for a trip.

#### 1.2 Attempted bribery, which includes:

- a) Attempting to offer or solicit an Unlawful Inducement;
- b) Promising to offer or solicit an Unlawful Inducement;
- c) Authorizing the acceptance or offering of an Unlawful Inducement; or
- d) Agreeing to accept, solicit, offer or authorize an Unlawful Inducement.

For the purposes of this Policy, the term Unlawful Inducement shall include money, gifts or any other valuable consideration, whether tangible or intangible, aimed to secure an unfair, undue or illegal advantage of any nature.

Any breach of this Policy shall: (a) amount to gross misconduct; (b) be treated with the utmost gravity; (c) be expeditiously investigated (independently) and lead by the CEO of Gulfair Group; (d) be dealt with according to the prevailing Personnel policies; and (e) reported to the appropriate authorities.

### 2. Areas with exposure of corruption

The following areas are identified as potential risk areas for corruption and include "Standards of Conduct" that are intended as principles and guidance to assist in identifying and dealing with situations of potential corruption.

### 2.1 Services

This section relates to potential business of Gulfair Group with third parties and other customers.

#### 2.2 Standards of Conduct:

- i. Gulfair Group will only participate in business where it can compete fairly for business based on the quality and price of its offerings and not by offering bribes or engaging in any other unethical behavior, either directly or indirectly.
- ii. Immediately upon the identification of a business opportunity and continuously throughout such business process, the concerned Personnel must undertake a risk assessment to identify the likelihood of the customer and the specific business opportunity undermining this Policy.
- iii. Approvals and escalation rules for price discounts, rebates, commissions, special payment terms or any other deviation from Gulfair Group standard terms and conditions for business contracts (if any), must be documented in relevant business policies.

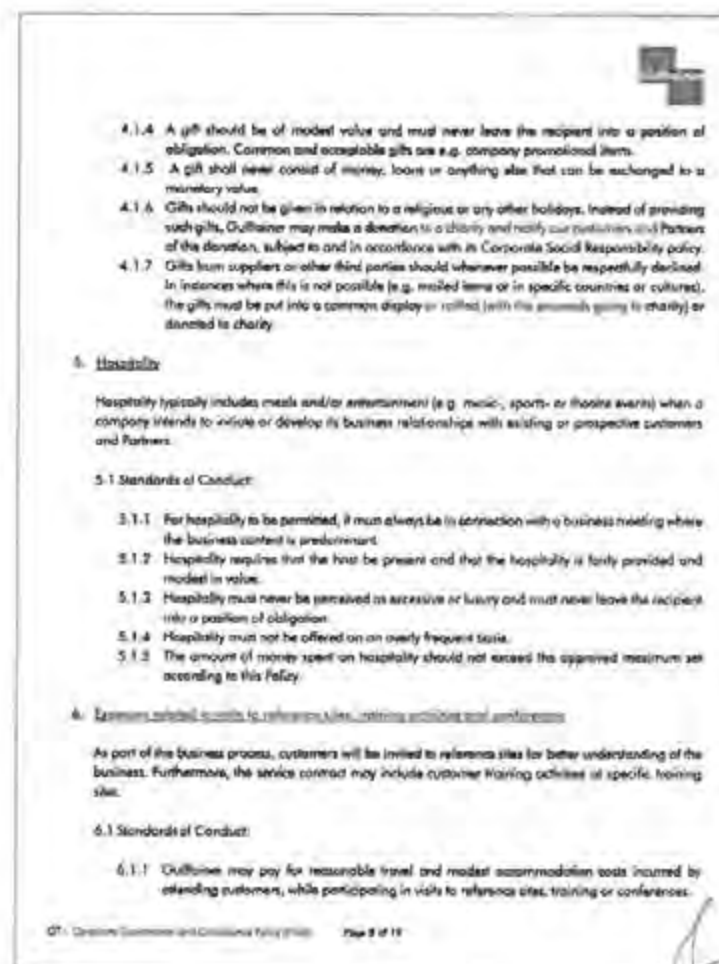
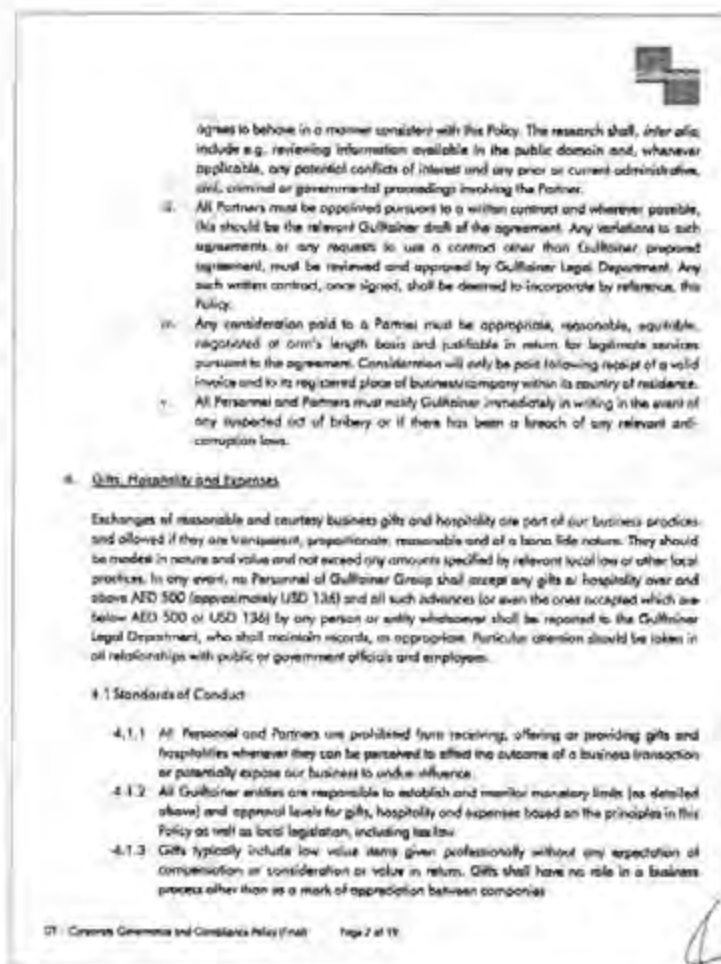
### 3. Partners

3.1 Gulfair Group does business with a number of Partners in different parts of the world. The Partners are responsible to conduct businesses according to this Policy in the same manner as Personnel, as Gulfair Group may find itself liable for their actions.

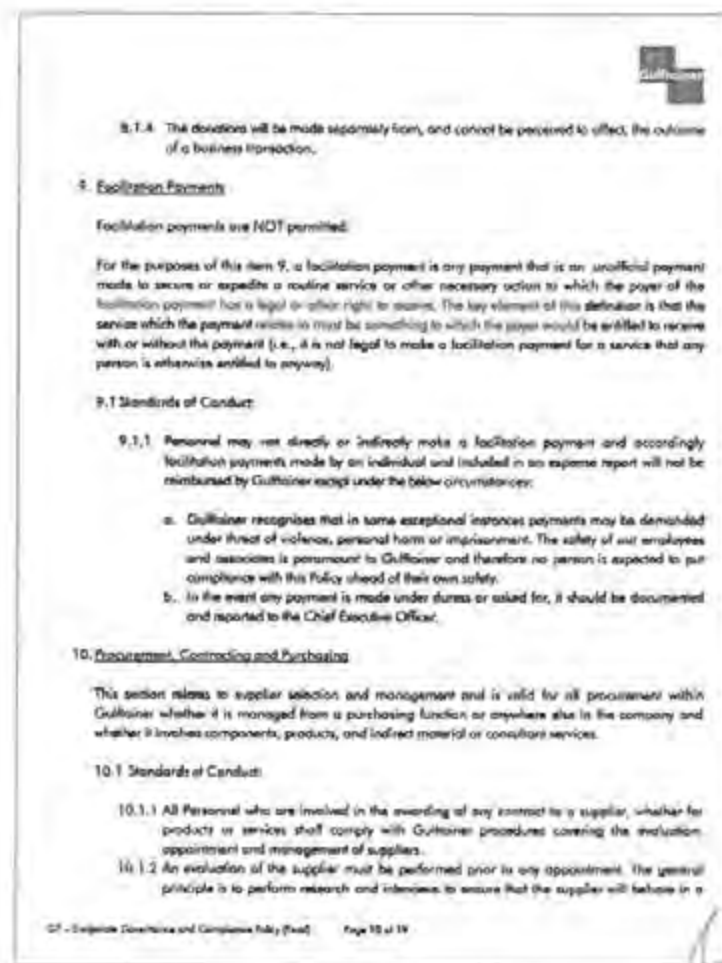
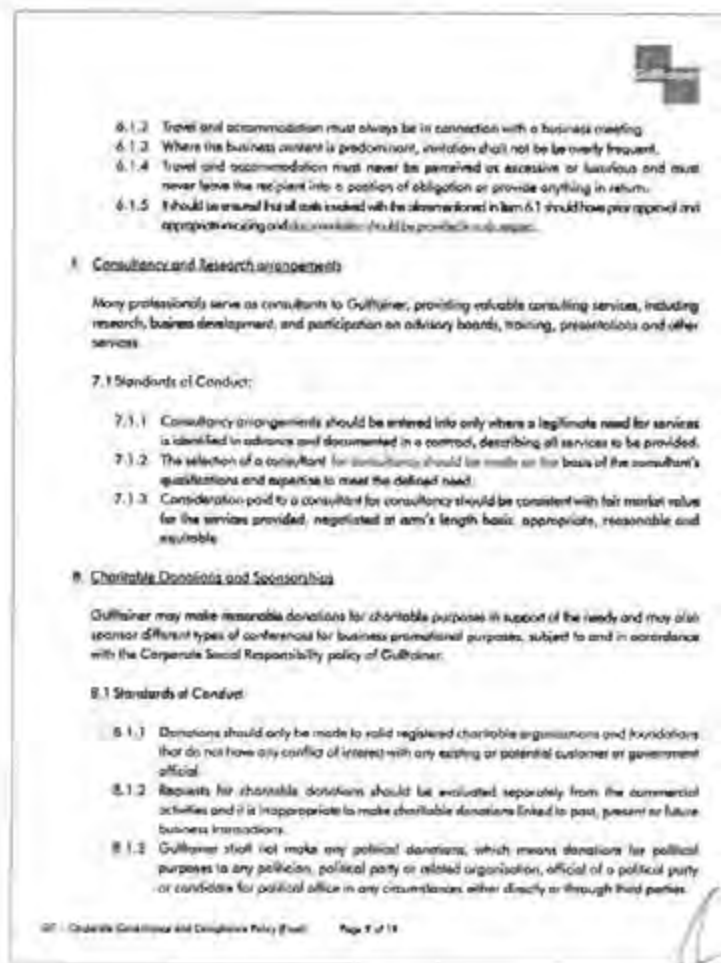
#### 3.2 Standards of Conduct:

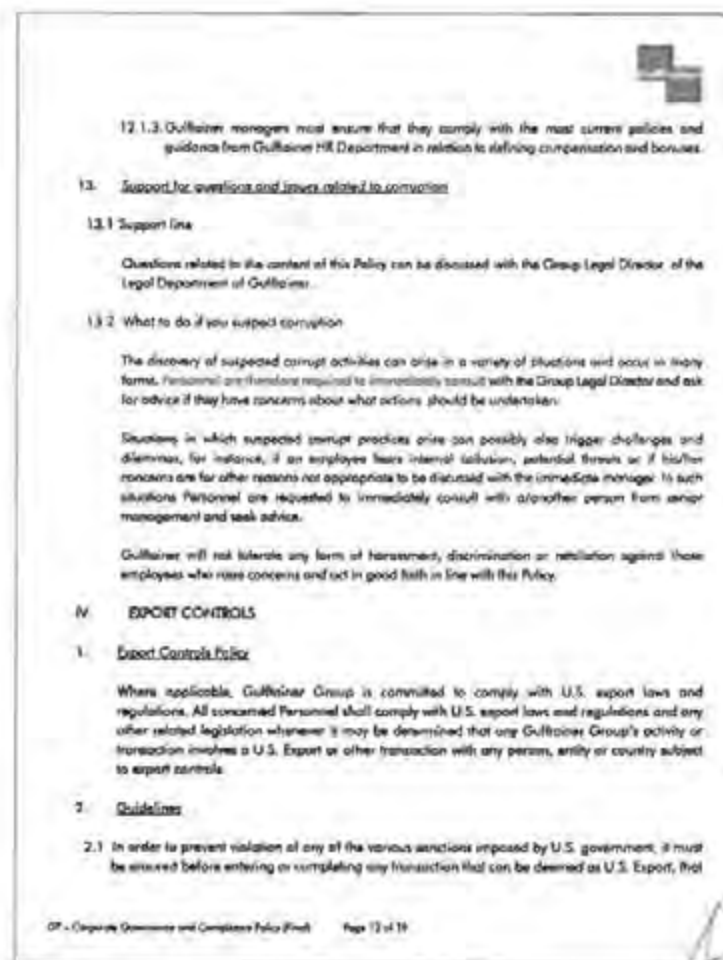
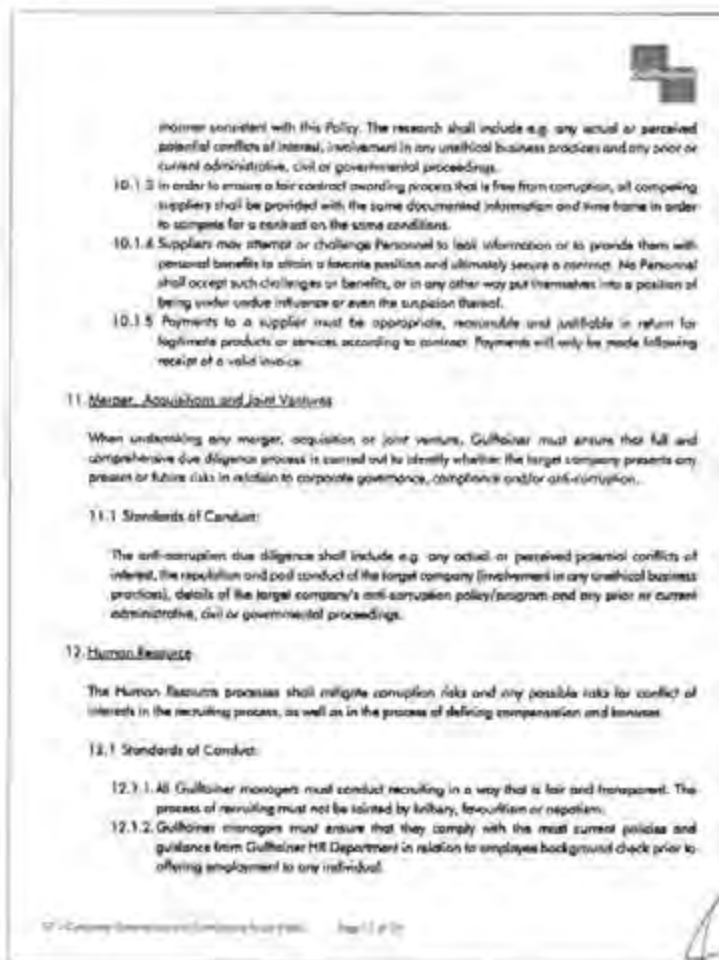
- 3.2.1 It is never appropriate for a Partner to carry out an act on Gulfair's behalf that would be a breach of this Policy, whether instructed to do so by Gulfair or not.
- 3.2.2 Authorizing, encouraging or knowingly allowing (which includes having a reasonable suspicion of their intention) any third party to pay or receive bribes or engage in other corrupt practices on Gulfair's behalf which are all serious violations of this Policy and can violate applicable anti-corruption laws.
- 3.2.3 All Personnel who are involved in any aspect of the relationship with a Partner shall comply with the following procedures:

- i. An evaluation/KYC (Know Your Customer) of the Partner must be performed prior to any appointment.
- ii. The general principle is to perform research and interviews to ensure that the Partner











the destination country/other party is not listed in any export denial, debarment, and blocked persons list of the U.S. government, such as:

- a. Department of Commerce "Denied Person List" (BIS);
- b. Department of Commerce "Entity List" (BIS);
- c. Department of Commerce "Unverified List" (BIS);
- d. Department of Treasury Specially Designated Nationals and Blocked Persons;
- e. Department of Treasury Specially Designated Terrorists organizations and individuals;
- f. Department of Treasury Specially Designated Narcotics Traffickers and Narcotics Kingpins;
- g. Department of Treasury Palestinian Legislative Council List;
- h. Department of Treasury Country Sanctions, as such list may be updated from time to time;
- i. Department of State Designated Terrorist Organizations;
- j. Department of State Terrorist Exclusion List;
- k. Department of State Arms Export Control Act debarred Parties;
- l. Department of State International Traffic in Arms Regulations Munitions Export Control Orders;
- m. Department of State Non-Proliferation Orders:
  - Department of State Missile Proliferators
  - Department of State Chemical and Biological Weapons Concerns
  - Department of State lethal Military Equipment Sanction
- n. Foreign Persons designated under the Weapons of Mass destruction Trade Control Regulations

2.2 All contemplated transactions that may involve a U.S. Export must undergo a compliance check before actually effecting the transaction to ensure non-applicability of red-flags indicators to the transaction and to ensure that none of the party to the transaction is listed in U.S. government's controlled list.

2.3 Personnel's responsibilities:

- a. Make themselves familiar with the provisions of this Policy and with various export control requirements, export laws and regulations;
- b. Examine the transactions, contracts, scope of work, etc. to determine if any of them will require export control requirement review before carrying on with the same;
- c. Adhere to the applicable laws, regulations and controls and this Policy diligently; and
- d. Disclose promptly any violation or suspected/potential violation of the export regulations or provisions of this Policy.

2.4 Red Flag Indicators:

- a. The customer or its address is similar to one of the parties found on the BIS's list of denied persons or the unverified list;
- b. The customer or purchasing agent is reluctant to offer information about the end use of the item;
- c. The product's capabilities do not fit the buyer's line of business, such as an order for sophisticated computers for a small bakery;
- d. The item ordered is incompatible with the technical level of the country to which it is being shipped, such as semiconductor manufacturing equipment being shipped to a country that has no electronics industry;
- e. The customer is willing to pay cash for a very expensive item when the terms of sale would normally call for financing;
- f. The customer has little or no business background;
- g. The customer is unfamiliar with the product's performance characteristics but still wants the product;
- h. Delivery dates are vague, or deliveries are planned far out of the way of destinations;
- i. A freight forwarding firm is listed as the product's final destination;
- j. Packing is inconsistent with the stated method of shipment or destination;
- k. When questioned, the buyer is evasive and especially unclear about whether the purchased product is for domestic use, for export, or for re-export.

2.5 All transactions undertaken by Gulfstar Group involving U.S. Export must be documented properly. Records such as accounts, financial details, and boycotts in relation to the export must be maintained in their original form, i.e. in the form they are created or received. The U.S. related records must be retained for a minimum period of five (5) years from the latest of the following times:

- a. Export of item from U.S. or the provision of financing, transporting or other service for or on behalf of end-users of proliferation;
- b. Any known reexport, transshipment, or diversion of such item; or
- c. Any other termination of the transaction, whether formally in writing or by any other means.

V. INTERNATIONAL TRADE CONTROLS

1. U.S. Economic Sanctions Policy

No "U.S. Person" who serves as a member of the Board of Directors, or who is an officer or employee of Gulfstream Group, shall participate in Gulfstream's business involving countries, governments, entities, or persons restricted under U.S. economic sanctions laws and regulations. A copy of this Policy shall be provided to all directors, and to all officers or employees of Gulfstream Group who are U.S. Persons or who manage or supervise such U.S. Persons by which guidance is provided regarding the circumstances under which a U.S. Person must be recused from "restricted business," and procedures as to how to effectuate an appropriate recusal.

## 2. Scope of U.S. Economic Sanctions in Particular

The procedures of this Section V apply to any and all U.S. Person directors, both inside and outside (independent) directors, and all other U.S. Person staff of Gulfstream Group.

## 3. Situations Where Recusal of a U.S. Person is Required

### 3.1 A U.S. Person director, officer or employee may not:

- 3.1.1 Participate in transactions or other dealings, including but not limited to selling, purchasing, transporting, brokering, or insuring activities, related to restricted business;
- 3.1.2 Approve a contract, transaction, investment, or dealing concerning restricted business, or a decision to commence, renew, expand, acquire, or sell, or terminate restricted business;
- 3.1.3 Be involved in any negotiation or commercial analysis of a contract, transaction, investment, dealing, or decision regarding restricted business;
- 3.1.4 Be involved in financing arrangements related to restricted business, such as decisions concerning how to price, finance, back, account for, or manage financial risk associated with restricted business, including but not limited to cash calls and credit facilities;
- 3.1.5 Be involved in any technical services related to restricted business;
- 3.1.6 Undertake any activity that would specifically facilitate, support, assist, supervise, or manage restricted business;
- 3.1.7 Refer any restricted business opportunity, undertaking, or activity to any entity or person;
- 3.1.8 Change Gulfstream Group's operating policies or procedures to allow Gulfstream Group or any other foreign entity or person to undertake activity involving restricted business, whether or not applicable to a specific transaction, e.g. on a one-time basis, or more generally, altering or modifying ordinary procedures with the specific purpose of facilitating ongoing restricted business. OR

3.1.9 Evade or avoid, or attempt to evade or avoid, U.S. economic sanctions that prohibit restricted business.

## 4. Situations Where Recusal of a U.S. Person is Not Required

### 4.1 A U.S. Person director, officer or employee may:

- 4.1.1 Receive general reports on restricted business activities, provided that the U.S. Person does not take any action, based on that report or otherwise, to assist or support Gulfstream Group's undertakings in connection with the restricted business;
- 4.1.2 Approve or work on the implementation of certain corporate "overhead" functions that apply globally to Gulfstream Group business operations that are:
  - a. not intended to provide support of a specific nature to a transaction involving restricted business, e.g., health and disability insurance to employees globally or general information and technology management support; and
  - b. used on a normal, day-to-day basis for all business activities (whether or not restricted business); OR
- 4.1.3 Consider whether activities or undertakings would be in compliance with, restricted under, or exempted from U.S. laws or regulations or applicable Gulfstream Group compliance policies and procedures, including a specific transaction or contract related to restricted business. (However, one cannot provide advice or be involved in implementing any business activity or commercial transaction that involves any restricted business.)

## 5. Procedure for Recusal

The corporate governance procedures below shall be followed for recusing U.S. Persons from participating in or approving or facilitating business that is restricted by U.S. economic sanctions laws or regulations.

5.1 The Group Legal Director shall evaluate if there is a risk that actions, undertakings, directions, or votes of the Board of Directors or subcommittee thereof, or actions of any officer or employee may cause a U.S. Person to be involved in restricted business that would be prohibited by U.S. laws or regulations.

5.2 If it is determined pursuant to the preceding paragraph that a matter would involve a U.S. Person in restricted business, then the Gulfstream Group Chief Executive Officer or other executive officer who is a non-U.S. Person, shall direct the U.S. Person in question to not participate in any such matter, and to be recused from the matter and any meeting or discussion relating thereto for the duration of any such matter.



5.3 Any decision to refuse a U.S. Person should be duly recorded in the records of Gullfinner Group and the Group Legal Director shall provide a refusal memo for U.S. Person to acknowledge and sign. The Gullfinner Legal Department shall also make a file note containing the basic facts about such refusal, including the reason therefore and the action taken. At minimum, the said note should:

- 5.3.1 Specify the reason for and the date of the refusal;
- 5.3.2 Specify the duration of the refusal (which may be expressed in terms related to the pendency of the matter before the Board of Directors or a subcommittee thereof);
- 5.3.3 Specify the effect of the refusal on the U.S. Person: e.g., that the U.S. Person is not to be contacted or involved or participate in any manner concerning the restricted business matter from which he or she has been refused;
- 5.3.4 Notify the non-U.S. Person who is to assume responsibility and authority for the restricted business matter for which the U.S. Person has been refused (if applicable);
- 5.3.5 Be disseminated to all/applicable members of the Board of Directors or other Personnel who might be affected by the U.S. Person's refusal; and
- 5.3.6 Be retained for as long as the U.S. Person serves in his or her position or five years from the conclusion of such restricted business activity, action, undertaking, or vote, whichever occurs last.

5.4 To the extent feasible, meeting materials involving a restricted business agenda matter from which the U.S. Person must be refused should not be circulated or distributed to the U.S. Person.

5.5 The refusal must be absolute. The refused U.S. Person shall have no involvement with any restricted business activity, action, undertaking, vote, or matter from which he or she has been refused. If the U.S. Person is refused and cannot conduct restricted business, then the U.S. Person cannot direct another person to approve of, participate in, or be involved with such restricted business.

5.6 The U.S. Person must leave a meeting room or terminate any electronic communication during the portion of the meeting or communication while the restricted business matter is under discussion and consideration solely by non-U.S. Persons.

5.7 Any questions regarding this Policy or its implementation can be directed to the Group Legal Director of Gullfinner.

#### VI. INVESTIGATION OF SUSPECTED BREACHES OF THIS POLICY

Suspicions and reports of corruption must never be ignored and accordingly all Personnel are obliged to pursue any such suspicions or reports.

Gullfinner will investigate all reports or other information received regarding alleged violations of this Policy. Failure to adhere to this Policy may result in disciplinary action appropriate to the violation, up to and including termination of employment or the contractual relationship, and legal proceedings.

As Gullfinner has a zero tolerance against bribery, all criminal activities including corruption will be reported to the relevant authorities, based on the findings of the independent investigation.

#### VI. MONITORING OF COMPLIANCE

Gullfinner has introduced and will continue to introduce a variety of controls across all areas of its business in order to monitor compliance with this Policy and related procedures to highlight any failures to comply. This will include, but will not be limited to, financial controls of invoices and expenses and self-assessment from appropriate functions, such as sales and purchasing, to identify and report deficiencies and improvement areas.

Gullfinner will perform audits and compliance reviews in order to test whether controls and processes are working properly. Audits will be carried out by internal resources or by external auditors.

All Personnel have an obligation to make clear to all Partners that they are required to comply with this Policy, and that sanctions and termination of the relationship may result, in the event of violations of this Policy.

#### VII. CONTINUOUS IMPROVEMENT

The results from monitoring activities, audits and compliance reviews will be thoroughly evaluated in order to assess whether actions undertaken are sufficient to deal with corruption risks and to improve the effectiveness of the program.

#### IX. GUIDANCE

This Policy shall be made available to all officers, directors, employees, consultants, agents, customers and Partners of the Gullfinner Group, by publishing it on Gullfinner's official website and notifying them about its existence and the fact that it will be subject to update and amendments from time to time.

This Policy shall form an integral and binding part of the executed standard terms and conditions that Gullfinner or any member of Gullfinner Group enters into with any customer for providing terminal management or logistics services.



Mr. Richard Blair, Group Legal Director, is hereby appointed as the Chief Compliance Officer of the Gulfstream Group in order to implement, monitor and review this Policy; and to provide guidance on this Policy as required. Any matters pertaining to this Policy should be brought to the immediate attention of the Chief Compliance Officer.

Approved on the 17<sup>th</sup> day of January, 2017 (as updated on the 09<sup>th</sup> day of January 2018).

Peter Richards  
Chief Executive Officer  
Gulfstream Company Limited



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### CAPEX SCHEDULE

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APPENDIX 16

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INITIAL PAYMENT

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4183 Initial Payment: \$11,536,000.00

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APPENDIX 17

**CURRENT LIST OF DSPC NON-UNION EMPLOYEES**

DIAMOND STATE PORT CORPORATION

Non-Union Port Employees (Pay Roll Name) as of August 6, 2018

[REDACTED]

[REDACTED]

## APPENDIX 18

### **DSPC LITIGATION**

None. Although DSPC notes that it is aware of the following pending litigation.

#### **U.S. District Court for the District of Delaware**

<u>Case No.</u>	<u>Case Title</u>	<u>Date Filed</u>	<u>Date Closed</u>
1:2018cv00195	<i>Tyler v. Diamond State Port Corporation</i>	2/02/2018	
1:18cv985	<i>Lourethia Rush v. Diamond State Port Corporation</i> (Employment Civil Rights Action)	7/2/2018	
1:18cv195	<i>Rudolph B. Tyler, Jr. v. Diamond State Port Corporation</i> (Employment Discrimination)	2/2/2018	

#### **Superior Court of the State of Delaware in and for New Castle County**

<u>Case No.</u>	<u>Case Title</u>	<u>Date Filed</u>	<u>Date Closed</u>
N18C-03-058 MMJ	<i>Faron Williams, II and Jerome Broomer v. Diamond State Port Corporation and Michael Phillips</i> (Personal Injury – Auto)	3/6/2018	
N17C-12-339 PRW	<i>Kocks Krane GmbH v. Dr. Patrice Gilliam-Johnson, Dr. Patrice Gilliam-Johnson in her official capacity as the Secretary of the Delaware Department of Labor; Francis Chudzik, in his official capacity as the Enforcement Supervisor for the Delaware Department of Labor; the Delaware Department of Labor, a Delaware government agency; and Diamond State Port Corporation, a Delaware Corporation</i> (Complex Com. Litigation)	12/27/2017	

(Note: By Order of the Court dated August 4, 2018, the litigation was consolidated with two other matters relating to the crane construction project in which DSPC is not a defendant, under the caption *In re Port of Wilmington Gantry Crane Litigation, C.A. No. N17C-22-276 PRW CCLD.*)